

UNIVERSITY OF NAIROBI
INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES
MASTER IN INTERNATIONAL STUDIES

**INTERNATIONAL REFUGEE LAW AND THE REFUGEE CRISIS IN THE 21ST
CENTURY**

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R50/6981/2017

**RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS OF THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL
STUDIES TO THE INSTITUTE OF DIPLOMACY AND INTERNATIONAL
STUDIES (IDIS), UNIVERSITY OF NAIROBI.**

NOVEMBER 2019

DECLARATION

Declaration by the student.

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

Signature

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Date

Declaration by the Supervisor.

This research project has been submitted for examination with my approval as University Supervisor.

Signature

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Date

DEDICATION

To my spouse, Ian Robert, for his support when I was undertaking my project. To my dear mother Jane Wanjiku who was there to guide me and help get to where I am now, to my dear father Ambrose Gichane for making this possible even when I thought that things would not work out.

ACKNOWLEDGEMENT

Most importantly I would like to thank the Almighty God for everything that He has made possible for me to accomplish. I acknowledge the support of my family throughout my studies and I am greatly indebted to them.

I would also like to acknowledge with gratitude my supervisor, Dr. Ken Wyne Mutuma who has been nothing short of supportive and very understanding throughout the period of this study. I am forever grateful for his support, patience and intellectual advice.

I would also like to acknowledge with gratitude the co-operation from IDIS and all those who assisted me in carrying out the research project.

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ACRONYMS

UN	-	UNITED NATIONS
UNHCR	-	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
UNGA	-	UNITED NATIONS GENERAL ASSEMBLY
OAU	-	ORGANIZATION OF AFRICAN UNION
AU	-	AFRICAN UNION
CAR	-	CENTRAL AFRICAN REPUBLIC
DRA	-	DEPARTMENT OF REFUGEE AFFAIRS
ICC	-	INTERNATIONAL CRIMINAL COURT
ICJ	-	INTERNATIONAL CRIMINAL COURT
UDHR	-	UNIVERSAL DECLARATION ON HUMAN RIGHTS
RSD	-	REFUGEE STATUS DETERMINATION
EU	-	EUROPEAN UNION
REC	-	REGIONAL ECONOMIC COMMUNITY
ICRC	-	INTERNATIONAL COMMITTEE OF THE RED CROSS
CRRF	-	COMPREHENSIVE REFUGEE RESPONSE FRAMEWORK
IDPS	-	INTERNALLY DISPLACED PERSONS

ABSTRACT

The refugee problem is not one that has begun recently but the world has been experiencing it even before the World War I. However, the world's focus on this issue only become more serious after the second war when it became clear that we needed to protect those displaced from their homes in Europe due to the war. Ever since, the international community has continued to implement laws that will ensure the protection of refugees. This notwithstanding, large numbers of humanitarian crises over the years , together with the ever evolving dynamics of international migration have led to challenges that have never before been experienced in the protection of refugees. In light of this there is a need to find out what these challenges are and how best to solve them. The purpose of this research is to research on the relationship of international refugee law Vis a Vis the refugee crisis in the 21st century. The study will begin by giving a brief background to the study then proceed to state and briefly discuss what the statement of the problem that has warranted the research is. The researcher will then state the questions that this research will answer and objectives that the researcher intends to achieve. This research will also indicate of what importance the study is to the academia fraternity, policy makers and the public. The researcher will then proceed to discuss what various scholars have written on several issues on refugees and refugee law. The researcher will indicate the theories that will guide the research study in the next section. The research will incorporate the use of secondary data sources as its research methodology. This chapter will conclude with an outline of what to expect of the entire study. The researcher in the next chapters will discuss the legal and institutional frameworks of the law, and its adequacy in combating the current refugee crisis and finally recommendations by scholars on how to best tackle the laws inadequacies if any. The final chapter will give a conclusion of the findings of the study and the researcher will also give recommendations on what she thinks is the best way to tackle the problems that have been discussed previously.

CHAPTER ONE

INTRODUCTION

1.0 Background to the Study

This Chapter will address the following issues; it will give a brief introduction of the study that the researcher intends to research on. It will then proceed to discuss briefly the problem to be addresses in the research and later on the questions that the researcher intends to answer during the research and the objectives that she intends to achieve. The researcher will then discuss the significance and justification of the study being under taken and finally discuss the research methods within which the research will operate.

Under the legal framework on refugees, a refugee is any person whether male or female who is currently not at home or in their country of birth or nationality because they are afraid that if they stay there they will be oppressed because of various reasons. This fear must not be illogical but one that can be substantiated. The fear of oppression might be brought about by the fact that this person is from a different ethnic group or nationality, has certain political affiliations or even membership in a certain community group.¹

1.1 Statement Problem of the Research

International migration and population dynamics is one of the single most outstanding factors behind international conflicts in the 21st century, despite having a law in place to govern this phenomenon. The United Nations (UN) estimates that more than 60 million people have now been forcibly displaced and that worldwide displacement is at an all-time high.² As each day passes, the numbers grow higher and the stories more tragic. The reasons for migration have now evolved from fear of persecution to other factors that include economic hardship and

¹ Article 1(A) (2), Convention on the Status of Refugees, 1951.

² <https://www.unhcr.org/figures-at-a-glance>

even environmental degradation. The problem that we are currently experiencing is not being experienced in one region only as was previously seen, nor is it a political dilemma for the United Nations but is a collective test for humanity. It is hardest to constantly remember the scenes of women and children behind barbed wire, huddled in boats, or confined in prison. These are not from historical archives but are taking place right now, before our very eyes.³

By the year 2018, the figure of persons who had run away to other countries worldwide had risen to 68.5 million.⁴ An estimated 25.4 million of this figure are below 18 years.⁵ In previous years, it was after the Second World War that the highest number was experienced as compared to previous years, many of those affected were from Europe. It became apparent that there was a need to implement laws for the protection of refugees or of persons forcefully displaced from their homes. There had been several previous attempts by The League of Nations to implement this type of laws but these attempts bore no fruits.⁶ After the second war many atrocities were committed against these group of persons and it became apparent that if laws were not implemented to protect them, continuous violations would occur. This is what led to the enactment of the 1951, Convention that provides for the protection of refugees which binds all member parties legally.⁷ Later on in the year 1967 a Protocol to the Convention was implemented in order to address issues that had not been adequately addressed under the Convention. It is referred to as the Protocol on the Status of Refugees, 1967.

They are the foundation on which international refugee law is grounded upon. They govern everything that affects refugees, from the definition of who a refugee is to the duties

³ <http://www.hill.com>opinion/international-refugee-crisis>.

⁴ <https://www.unhcr.org>figures-at-a-glance>

⁵ <https://www.unhcr.org>figures-at-a-glance>

⁶ Jaeger, Gilbert. "On the history of the international protection of refugees." *International Review of the Red Cross* 83, no. 843 (2001): 727-738.

⁷ Reza Majd. "The limitations of international refugee law in dealing with crisis." (2018).

owed to refugees by states and vice versa. Although these two are the main ones there are several other international instruments on this subject.⁸

Clearly we do not fall short of legal or institutional frameworks such as the UNHCR created in 1950, which ensure that we do not suffer from the refugee catastrophe that we are currently experiencing. Why then has the same occurred? There is therefore a need to find out what exactly the reasons for the refugee crisis in the 21st century are. Does this mean that the law is not able to prevent the large numbers of persons who have sought asylum in other countries?⁹ This study will examine the reasons why international refugee law has failed to prevent or even manage the refugee crisis and what effects this has had on the refugees and the world in general. It will also examine the steps that the international community and international organizations are taking to mitigate these problems and later on give recommendations on how best these problems can be dealt with.

1.2 Research Questions

- a) What are the legal and institutional frameworks under international law that deal with refugees and how adequate are they in dealing with the 21st century refugee crisis?
- b) What reasons have led to international law failing to prevent the refugee crisis?
- c) What solutions have been given by scholars to resolve this problem and what are their critiques?
- d) What recommendations does the researcher give to help in addressing issues raised by the critics in (c) above?

1.3 Research Hypothesis

⁸1967 UN General Assembly Declaration on Territorial Asylum, The 1969 OAU Africa, The 1974 United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflict; The 1984 Cartagena Declaration on Refugees for Latin America and The 2016 New York Declaration for Refugees and Migrants.

⁹ Khan, Azfer Ali. "Can international law manage refugee crises?" *Oxford U. Undergraduate LJ* (2016): 54.

The inadequacies of international refugee law are the reason why we are facing a refugee crisis in the 21st Century.

1.4 Research Objectives

- a) To identify and discuss the legal and institutional frameworks under international law and their adequacy in addressing this 21st century problem.
- b) To identify and discuss why international law has failed to prevent the refugee crisis.
- c) To identify and discuss solutions that have been provided by scholars on how to mitigate the shortcoming of the law and also identify the critiques.
- d) To give recommendations on how to resolve the issues raised by the critics.

1.5 Justification to the Study

1.5.1 Academic Justification

The number of displaced persons around in world has gone up in the 21st century as compared to previous centuries, this may be attributed in one way or another to the following factors; War this may either be internal or external type of wars, economic crunches in the homes of those fleeing, climate change which in many cases leads to scarcity of natural resources or even natural calamities such as earthquakes, typhoons or even tsunamis that cause great destruction. This has made the issue of refugees a vital subject and therefore it will warrant the need for further research by those in academia. This research will assist those undertaking further research in the field of academia on this topic or related topics with more materials for their research.

1.5.2 Policy Justification

The failure of the existing laws on refugees to prevent the current disaster in this century from occurring, is a clear indication that there is need for these laws to either be amended, or for policy makers to come up with new laws that will mitigate the shortcomings of the existing

international laws. This research will therefore further contribute to previous research on the law's failure to prevent the current crisis in the 21st century and in so doing provide more material on this subject. This will assist policy makers to strengthen existing laws on this subject or even help in the formulation of new ones. This research may also help civil societies, lobby groups and non-governmental organizations in lobbying for enactment of new laws that mitigate the shortcomings of international law or even assist them in identifying the provisions of the regime that require amendment.

1.5.3 Justification to the General Public

This study will assist in educating or further enlightening the general public on refugees and the law that protects them. It will also give them insight on why certain states and regions such as Kenya, America and even Europe, have taken various steps which although may not very popular with the human rights activists are meant for the well-being of these countries. The research will help bring out the problems of the international refugee law and further enlighten the general public on issues that are central to the 21st Century refugee crisis. Some of the key issues that will be discussed will include the issue of shared responsibility, a key element in some of the emerging issues such as Britain leaving the region's economic community (REC) in addition to the unfortunate deaths of hundreds of refugees at sea.

1.6 Literature Review

This section of the study will critically examine what various scholars say on the law that protects refugees and the current predicament that the world is facing. The section will discuss what the authors say in regard to various topics that will be discussed.

Koskenniemi, Martti (2015, 553) defines refugee law as the branch of law that governs all issues to do with refugees. Some of these include the privileges that they enjoy and the

responsibilities that they owe to States.¹⁰ Worth noting however is that although both refugee law and human are similar in terms of what they purpose to achieve they their purpose varies.

Professor Goldenziel Jill (2017, 8) in her article brings out the difference as being the extent to which the law on refugees overlooks state sovereignty. For example, once a State identifies a person seeking refuge within its borders, it cannot send that person back to their home country if he or she risks persecution or any form of grave harm.¹¹ The States right to decide on who is welcome within its borders is taken away. This right conflicts with the principle of sovereignty as the State's "hands" are tied.¹²

Ralph Janis (2017), states that international law on refugees dates back to Ancient Greece where it was possible to go to certain temples that belonged to particular communities for protection.¹³ He then proceeds to state that the notion of asylum is embedded on the reaction of some rulers in Europe who allowed French protestants who were being persecuted by the French catholic government in the 16th and 17th Century to reside in their countries.¹⁴ As stated earlier on international governmental organization that is the League of Nations started seriously focusing on dealing with the protection of refugees when many persons were left homeless of forced to run away from their homes after the second war. After this world war the league appointed Fridtjof Nansen who was a Norwegian to help in repatriating the Russians and other prisoners of war back home, this was after the October Revolution.¹⁵

¹⁰ (Koskeniemi, Marti (September 2002). "Fragmentation of International Law? Postmodern Anxieties". *Leiden Journal of International Law*. 15 (3): 553–579. Retrieved 30 January 2015.)

¹¹ Goldenziel, Jill (September 1, 2016). "The Curse of the Nation-State: Refugees, Migration, and Security in International Law" (PDF). *Arizona State Law Journal*. 48: 8. SSRN 2684903.)

¹² Goldenziel, Jill (September 1, 2016). "The Curse of the Nation-State: Refugees, Migration, and Security in International Law" (PDF). *Arizona State Law Journal*. 48: 8. SSRN 2684903.)

¹³ Ralph Janik (November, 4th 2017). "A (very) Short History of International Refugee.

¹⁴ K Hailbronner, J Gogolin, 'Asylum, Territorial' (Max Planck Encyclopaedia of International Law, 2013), paras 7f.

¹⁵ <https://www.refworld.org/docid/3dd8d12a4.html>.

The enactment of the Convention that provided for issues that dealt with the status of refugees on 28th July 1951, was a game changer on the international stage. The Convention is described by many as the most comprehensive mechanism under refugee law which binds parties officially. Its main articles are still applied in current issues.¹⁶ The Convention's scope was very limited and therefore states came up with its Protocol in 1967 to bridge the time and geographical constrains.¹⁷

1.6.1 International Refugee Crisis

A refugee is a person that is loosely described by many as one who has runs away from home because of the fear that he or she maybe oppressed or because they are in need of better living conditions than they currently have. This definition is made more comprehensive under the Convention as it describes a refugee as any human being who due to a substantiated fright of being mistreated at home, flees to another country because he is not willing to let his home country protect him. It continues to state that this fear may because of political affiliations, religion or even one's race.¹⁸

A Refugee crisis occurs when large groups of displaced persons or refugees run away from their home countries due to problems at home or due to problems experienced during the course of migration. It may also refer to problems that these group of persons is experiencing in the country where they sought refuge.

The 21st century has seen the largest number of refugees ever with number totaling 65.6 million people. This indicates that everyday a total number of around 13,000 people are

¹⁶<http://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>.

¹⁷ Ibid

¹⁸ Article 1(A) (2), 1951, Convention on Protection of Refugees.

displaced each day. This is caused by various factors which include climatic changes, environmental degradation and even economic hardship.

1.6.2 Reasons for Migration

Betts (2013, 103) reiterates that the nature of cross-border displacement has transformed dramatically since the adoption by parties of the Convention. The number of persons seeking asylum over the years has drastically gone up.¹⁹ The root causes of the migration have also increased from fear of being persecuted and are not limited to this alone as provided under the law. He states some of the root causes of migration as; environmental change, food insecurity and violence.²⁰ These are just some of the few reasons that have led forced displacement. Deplorable conditions that are experienced in weak States also make it possible for human rights deprivations to occur. The following are some of the root causes expounded further;

1.6.2.1 Human Rights Violations and war.

According to Cretu (2015, 245), the persistent violation of human rights in many cases culminates to civil wars in the country where they occur.²¹ Wars whether within borders or across borders cause people run away from their homes in search of protection in other countries that are not experiencing such hostile environments. According to the UNHCR, the two main reasons why we are currently experiencing this refugee crises in the world is because of the wars that have persisted all over the world and the fear of being mistreated if one is of an opposing political affiliation to the government or one is of a certain religion or even race.

¹⁹ Betts, Alexander. *Survival Migration: Failed governance and the crisis of displacement*. Cornell University Press, vol 31(2013):(101-104)

²⁰ Ibid

²¹ Cretu, Beatrice Nicolle. "How Syria's neighbors and the European Union are handling the refugee crisis." *Romanian Journal of History and International Studies* 2, no. 2 (2015): 245-262.

It is shocking to note that around the year 1995, approximately six individuals per second were evicted from their homes. By 2015, it had risen to 24 people each minute.²²

Cretu likens the Syrian refugee crisis, to one of the most prevalent over the years and states that it cannot be equated to any other crisis since World War II. The number of Syrians running away from being oppression and serious abuses of their human rights is very large. These violations are what has led to the internal conflict which has persisted for over 8 years. The effects can no longer be controlled and they are being experienced all over the world. It is not possible for the international community to turn a blind eye.²³

Many governments in several countries in the 21st century have been faulted for certain injustices against their citizens and these injustices are what has caused the large number of refugees we are currently experiencing. Syria and Myanmar are good examples of states where such injustices occur. Marginalization, discrimination and inequality are examples of human rights violations.²⁴ A good case of marginalization would be the case of xenophobia in South Africa where persons are maimed and even killed because of their color, tribe or even country of origin. Such persons are ready to put everything on the line by taking overcrowded boats across the Mediterranean Sea in order to seek refuge. In most cases these boats have a 90% chance of sinking.

1.6.2.2 Environment and Climate

The second most prevalent reason for the migration of large numbers of people is the change of the environment and climate. This is because adverse changes majorly affect resources such as food, aquatic bodies and grassland among others. A decline of the quantity

²²DeJesus, K.M., 2018. Forced migration and displacement in Africa: contexts, causes and consequences.

²³ Cretu, Beatrice Nicolle. "How Syria's neighbors and the European Union are handling the refugee crisis." *Romanian Journal of History and International Studies* 2, no. 2 (2015): 245-262.

²⁴Mayer, Benoit. "The international legal challenges of climate-induced migration: proposal for an international legal framework." *Colo. J. Int'l Env'tl. L. & Pol'y* 22 (2011): 357.

of these resources will most likely than not lead to conflict among persons or communities that depend on these resources for their livelihood. Such changes may lead to catastrophes such as Hurricane Katrina which leave many people homeless or even worse dead. The term "climate refugees" is commonly used for persons who have been displaced by climate change however, this term is not in harmony with the description provided under the law. It is only recently that persons displaced due to climatic changes have been considered as persons who should be granted asylum.²⁵

Black (2011,3) in his article states that this factor may directly affect the migration of persons due to the precariousness of the place where this change has occurred. The changes may lead to catastrophic occurrences such as tsunamis, typhoons and even earthquakes that may lead to the loss of lives. Many are not willing to pay the ultimate price and thus in most cases they opt to migrate to other countries.²⁶ The change may affect migration indirectly. This may be seen by assessing economic drivers which includes a change in living conditions, and political drivers, which means that people have started fighting due to the scarcity of resources caused by the changes.²⁷

1.6.2.3 Economic hardship

Baldwin-Edwards (2005), states that during a study on migration undertaken in the Mediterranean region, and Africa as the regions where these persons migrate from and European Union as the preferred destination, with primary data collected from Turkey, Morocco and Egypt as countries of origin, and Italy, Spain and Netherlands as the preferred destination countries, it was established that in a country such as Morocco the number of people

²⁵Costello, Anthony, Mark Maslin, Hugh Montgomery, Anne M. Johnson, and Paul Ekins. "Global health and climate change: moving from denial and catastrophic fatalism to positive action." *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 369, no. 1942 (2011): 1866-1882.

²⁶ Black, Richard, W. Neil Adger, Nigel W. Arnell, Stefan Dercon, Andrew Geddes, and David Thomas. "The effect of environmental change on human migration." *Global environmental change* 21 (2011): S3-S11.

²⁷ Ibid

migrating to the preferred destinations in search of employment and better living conditions was very high. The most number of migrants were men in their 20s or 30s who had higher educational qualifications as compared to other members of the society. The main form of migration was individual migration as the men migrated first in search of better education and employment while their wives and children joined them later on.²⁸

This form of migration has been proven to be very costly and in many cases persons who are not able to raise the required amount are excluded from transport and logistical plans. The presence of cartels in many instances only makes it a whole lot worse. The mass movement of persons from Zimbabwe is a good example in this case as many of these persons were locked out as they failed to meet minimum standards.²⁹

1.6.3 Countries Most Affected By the Crisis

Example of countries with the largest refugee populations around the globe are as follows;

1.6.3.1 Syria

Syria contributes the biggest figure of refugees compared to other countries in the world and this is occasioned by the ongoing internal war. The situation is made worse by interference from external forces that is the Arab and Western States. The Syrian war according to Mercy Corps an organization that provides aid to refugees has accelerated more than any other crises in the world. According to Mercy Corps there are a total of 6.3 million Syrian refugees.³⁰

John M. Balouziyeh in his book *Hope and a Future: The Story of Syrian Refugees* writes that what he saw in Syria during his travels was heartbreaking and anyone even those with

²⁸ Baldwin-Edwards, Martin. *Migration in the Middle East and the Mediterranean*. Geneva: Global Commission on International Migration, 2005.

²⁹ <http://www.Polity.org.za> "Zimbabwean migration into Southern Africa: Trends and responses (November 2009)" Retrieved 2 August 2017.

³⁰ Heather Murdock. "From Syria to Europe: The Price to They Pay."

hearts of stones would break a tear for those in Syria. It is so dire that people lack basic needs such as food and in some cases they have no option but to eat grass so as to live to see another day. According to the UNHCR by the year 2015 around 10 million Syrians needed to be rescued that is almost half of the country's population and with the Arab States and the Western Countries that are involved in fighting the Assad regime allies having limited their resettlement programs it becomes very difficult for these poor living conditions to be alleviated.³¹

John M. Balouziyeh continues to give an overview of the crisis in Syria and methods in which the refugees can be assisted through voluntary repatriation, resettlement or local integration. What he fails to give recommendations on, is how to deal with the core reasons of the war in Syria. In order to permanently end the war in Syria the first step would be to identify root causes of this war are and how to deal with them. This in the long run would assist in reducing the number of Syrian refugees drastically.

1.6.3.2 Myanmar

Myanmar comes in as the fourth and this is immediately after South Sudan. The large number is due to the lengthiest internal war ever experienced worldwide, that has continued since immediately after Myanmar got its independence in 1948. The British were the colonizers of Myanmar.³² The war is caused by alleged political injustices against the communists and ethnic minority groups. The groups claim that they do not have adequate representation in the current régime. Most of the refugees from Myanmar end up in Bangladesh. A total of 932,000 Rohingyas have sought refuge within the borders of Bangladesh.³³

³¹ John, M. Balouziyeh "Hope and a Future: The Story of Syrian Refugees." 2016.

³² Miliband, David (12 December 2016). "How to Bring Peace to the World's Longest Civil War". TIME. Retrieved 11 March 2019.

³³<http://www.mercycorps.org>articles>world's-5-biggest-refugee-crisis>.

Ahsan (2015, 285) argues that in Myanmar the government deliberately excludes the Rohingya from holding governmental positions.³⁴ He goes on to say that Rohingyas have been citizens of Burma for the longest time and that there is no way that the government's claims that they are migrants are true. He continues to state that because refugee law is not able to enforce its provisos some states or regions have opted not to sign the 1951 Convention. One of such a region is Southeast Asia. This inadequacy is what has led to the injustices that have been meted upon the Rohingya in Myanmar. Despite political pressure from the international community to prevent the injustice against this group from persisting, there is no sign of reprieve for this group of people.³⁵

1.6.4 The Refugee Crisis in Africa

Africa has a total of 18 million refugees that is slightly above a quarter of the world's total refugee populace. This number has gone up over the past number of years due to various reasons that occur in African countries. These include recurring crises in countries such as South Sudan.³⁶ There have also been very many persons forcefully displaced from their homes across Africa due to violence that is instigated by political leaders.³⁷ Countries most affected by the crisis include Somalia, Sudan and South Sudan.

Betts (2013, 104) in his research, studies the reasons that lead to persons fleeing from their homes and the responses thereof. He uses DRC, Somalia and Zimbabwe as case studies. Betts explains the variation in how institutions in the three countries respond to the issue of refugees. In some cases refugees are offered asylum in others they are detained in very brutal conditions while in other cases they are deported. The inadequacies of refugee law according

³⁴ Ahsan Ullah, A.K.M. "Rohingya Crisis in Myanmar: Seeking Justice for the "stateless." *Journal of Contemporary Criminal Justice* 32, no.3 (2016):285-301.

³⁵ Ahsan Ullah, A.K.M. "Rohingya Crisis in Myanmar: Seeking Justice for the "stateless." *Journal of Contemporary Criminal Justice* 32,no.3 (2016):285-301

³⁶ <http://www.unhcr.org>africa.html>

³⁷ Kalipeni, Ezekiel, and Joseph Oppong. "The refugee crisis in Africa and implications for health and disease: a political ecology approach." *Social Science & Medicine* 46, no. 12 (1998): 1637-1653.

to Betts are what has led to the disastrous violation of human rights. These seriously interfere with international security.

The African Union has been at the forefront of fighting for the rights of refugees in the 21st century even back when it was referred to as the Organization of African Union. This is seen by the OAU's effort to expound on the definition given for refugees by the Convention. The OAU adopted a regional treaty that expounded on the description of a refugee in addition to what the Convention provides. It has also enabled countries within the region to enact agreements that further the responsibility to ensure the protection of refugees.^{38 39}

1.6.5 Refugee Crisis in Kenya

Burns (2010, 5) observes that in Kenya there are about 400,000 refugees most of who are from Somalia and South Sudan. Kenya hosts them mainly in Daadab in Garissa and Kakuma in Turkana County both are refugee centers.⁴⁰ The country has a government agency known as the Department of Refugee Affairs (DRA). The department's main purpose is to assist in handling refugee matters in the country together with the UNHCR. The department is established under the refugee Act that came into in 2006 and its regulations of 2009.⁴¹

Kenya has ratified several international instruments whose main purpose is ensuring that the rights of refugees are safeguarded. Some of these agreements include the, 1951 Convention, 1967 Protocol and The Convention on Specific Aspects in Africa.⁴² Several threats

³⁸DeGhetto, Kaitlyn, Jacob R. Gray, and Moses N. Kiggundu. "The African Union's Agenda 2063: Aspirations, challenges, and opportunities for management research." *Africa Journal of Management* 2, no. 1 (2016): 93-116.

³⁹ Convention on Specific Aspects of Refugee Problems, Charter on Human and Peoples' Rights, Convention on the Prevention and Combating of Terrorism and the African Charter on Democracy, Elections and Governance Convention for the Elimination of Mercenaries in Africa.

⁴⁰ Burns, Avery. "Feeling the pinch: Kenya, Al-Shabaab, and East Africa's refugee crisis." *Refuge: Canada's Journal on Refugees* 27, no. 1 (2010): 5-15.

⁴¹ United Nations High Commissioner for Refugees (UNHCR), Global Appeal 2014–2015: Kenya 2 (Dec. 1, 2013), <http://www.unhcr.org/528a0a244.html>, archived at <http://perma.cc/68GJ-CQCQ>.

⁴² States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, UNHCR, <http://www.unhcr.org/3b73b0d63.html> (last visited, Dec. 28, 2015), archived at <https://perma.cc/2NMZ-C8M3>.

to the country's security by persons who have been granted asylum in refugee camps within the borders have meant more stringent refugee policies. Some of these threats include bomb attacks such as the one that was experienced at Westgate Mall and the most recent attack on Dusit D2 Hotel. These attacks have had devastating effects. In fortifying its security defenses the Country has made it mandatory for all asylum seekers and refugees who live towns to move from these towns to refugee camps that have been put up for them.

Burns continues to state in his article that in order to understand the reasons for Kenya's current hard stance in regard to refugees, the country's strategic position in East Africa must be considered.⁴³ Secondly, the complex relationship between the pressure from the international community and internal factors bring out the countries struggle between upholding human rights and further propelling the war on terror. It is obvious that any nation's first concern is the security of its citizens, and not holding the title for the most humanitarian country.⁴⁴

1.6.6 Has International Refugee Law Failed

Betts agrees that the law has been unsuccessful and he comes to this conclusion through the cases of persons fleeing from three of the most unstable countries in Africa these are Somalia, DRC and Zimbabwe. He explains that there are variations in the institutional and legal frameworks across the bordering host states. The frameworks are quite varied and this means that some of the persons seeking asylum will be lucky while others are not so lucky. Some of the so not lucky ones end up being detained or deported in brutal conditions.⁴⁵ Betts writes that the insufficiencies negatively impact on human rights and have become a serious threat to the well-being of all persons in the world.

⁴³ Burns, Avery. "Feeling the pinch: Kenya, Al-Shabaab, and East Africa's refugee crisis." *Refuge: Canada's Journal on Refugees* 27, no. 1 (2010): 5-15.

⁴⁴ Ibid

⁴⁵ Turner, Simon. "Survival Migration: Failed Governance and the Crisis of Displacement." (2014): 914.

James C. Hathaway also believes that the international refugee law has failed because of two reasons. One is because it does not clearly provide guidelines on how states should shoulder the responsibility of refugees.⁴⁶ This means that States that neighbor host States end up having to bear the larger burden. The non-refoulement principle which states that (a State should not send refugees that they find within their borders to their home country if the persons fear facing oppression or any form of serious harm).The Convention does provide any provisions on the mechanism that States should use in determining whether a person should be granted asylum. This means that States may use this discretion to limit the number of refugees the host within their borders.⁴⁷

The researcher will refer to some of the writers stated above in identifying what reasons have led to international refugee law failing to prevent the 21st Century refugee crisis and also in identifying some of the recommendations that some of the writers have given in order to help best mitigate these shortcomings. The researcher will go ahead and critique each of this recommendation in line with the works of various critics. This research study is different from the writings of the different scholar as it will not only discuss the law's shortcomings, recommendations, critics to the recommendation but the researcher will discuss what she thinks would be the best solution after considering the critics on previous recommendations.

The gaps in literature on the failure of international refugee law include the fact that there are very few recent articles or books on this topic despite the same being a topic that is discussed in almost every meeting of the United Nations. The sources of literature are also very scattered and it is quite difficult to find an article or book that contains the reasons for failure of law, recommendations on how to improve it and reasons why it may or may not work.

⁴⁶ Hathaway, James C. "*Reconceiving international refugee law.*" Vol. 30. Martinus Nijhoff Publishers, 1997.

⁴⁷Hathaway, James C. "*Reconceiving international refugee law.*" Vol. 30. Martinus Nijhoff Publishers, 1997.

1.7 Theoretical Framework

This research will utilize two international theories in the course of this study and these are;

1.7.1 The Classical Realism Theory

The main proponents of the Realism theory include Hans Morgenthau, Thomas Aquinas and John of Salisbury. The theory states that man is generally evil and is constantly in contest to make his imperfect self-perfect. He is also constantly trying to survive and because of this he is not sure about when other attacks from other people also trying to survive may come about and therefore he ends up with a security dilemma as both parties want to ensure that the other is not able to attack and because of this there is constant need to acquire more power with each passing day. People care about their survival and therefore they cannot be sure about attacks from others and thus the need to protect themselves as in the case of Britain exiting its regional block that is the EU. One of the reasons that she gives is that the number of migrants that flock to Britain is too large and this has led to heightened insecurity caused by those who seek asylum in the country. Refugees in this case are therefore considered a security threat. Human beings according to classical realism are not only objects used to attain international security but they are also its subject.⁴⁸

This theory is relevant to the research as it will help bring out some of the main reasons why international refugee law has not managed to prevent the refugee crisis. The theory will bring out the selfish nature of states in that the more developed states avoid being included in the equal sharing of the responsibility of refugees with the developing countries and so they try to compensate for this providing financing. This goes against all the nature of what burden sharing really is. The theory will bring out the fact that declining political will of States is another major contributing factor of the law's failure.

⁴⁸ Rösch, Felix, and Richard Ned Lebow. "Realism: Tragedy, Power and the Refugee Crisis." *Realism in Practice* (2018): 6.

1.7.2 Constructivism Theory

Constructivism theory analyses the human perspective of the world. The theory analyses one's view of the world. Under this theory the accepted social behavior of individuals is what defines everything. The advantage and disadvantage of accepting to grant asylum greatly impacts on the decision that the State will make on whether to admit or not. The description of certain situations, events or even occurrences in the world at large by individuals or even the media are what determine whether the concept of whether the world is secure or insecure. This same description is what shapes their personalities and provides insight on what they as a threat to their own security.⁴⁹

This theory will bring out the nature of States and the subject of cooperation. In many cases it has been proven that States will only cooperate in sharing of the responsibility of refugees if the same will benefit them in one way or another. The self-nature of States is what dictates its reason to cooperate under any circumstance. If the State feels that it has nothing to gain from the said cooperation then more often than not there will be cooperation. In our case failure to cooperate means that refugees are locked out of certain States because the States feel that they have nothing to gain if they allow persons to seek Asylum within their borders. Most States view this as a costly burden that may also threaten their security. This has also contributed the failure of International law as there is no body that can compel a country to open up its borders for asylum seekers. Even the UNHCR does not have this mandate.

1.8 Research Methodology

This research study will be designed as an exploratory analysis of the obtainable writings on the research topic. The highly preferred method for this study, taking into

⁴⁹ Rösch, Felix, and Richard Ned Lebow. "Realism: Tragedy, Power and the Refugee Crisis." *Realism in Practice* (2018): 6.

consideration the availability of secondary sources, was desktop analytical research⁵⁰; this include articles, books, conventions, treaties, internet, and case studies. Available literature in books, internet and periodicals will be the main tools used to conduct this study. Secondary analysis is the analyzing of data that has already been collected by a different researcher during their research. This type of analysis gives the researcher the permission to investigate on the areas of research without having to go to the field so as to collect data to be used in the research. They ease the accessibility to the research material, very time efficient and cost friendly. This therefore renders the desktop analytical method the most preferred for this work. Desk research comprises probing of obtainable resources, such as articles and reports

1.9 Chapter Outline

The first chapter of this research study will handle the following; it will give a background of the study that the researcher intends to research on. It will then proceed to discuss in depth the statement of the problem and later on list the questions that will guide the research and objectives that the researcher intends to achieve during the study. The researcher will then discuss the significance and justification of the study being undertaken, review in depth literature that has been written on this subject, state the theories that the research will rely on and adequately state how they will apply to the study. Finally, chapter one will discuss the research methods within which the research will operate and give a chapter outline of each chapter in the research paper.

Chapter 2 of this academic study will discuss refugee law in relation to the refugee. In order to achieve comprehensive results in identifying this relationship, the researcher will begin by defining what international law is, its sources and also state some of its branches. The researcher will then proceed to give more details on the focal divisions of international law that

⁵⁰<http://www.research-pmr.com/desk-research>. Accessed on 29 November 2015.

are associated with refugees. These are international human rights law, international humanitarian law and the most obvious international refugee law.

Under refugee law various issues will be discussed including the law's description of who is a refugee, and the different amendments made to this definition by different regions. The Researcher will then proceed to discuss steps that states and the UNHCR take in identifying if one qualifies to be granted asylum and the exceptions as to when one can be granted this status. The researcher will after this proceed to discuss what the role of the two other laws that were previously mentioned play in the fight to protect of refugees. The adequacy of all three of these international laws will also be discussed under this chapter. The researcher will then conclude the findings of this particular chapter.

The third Chapter is on the adequacy of the law on refugees in handling the international crisis of the 21st century. Despite praises by the UNHCR which claims that although the 1957 convention and 1961 protocol came into force over 60 years. they are still very applicable today and that they continue to be very helpful in dealing with issues to do with refugees and ensuring that states comply. This however, does not really portray the absolute truth as some states have declined to accept or relocate refugees in their countries. Some have decided to deport them and others have even resulted to closing refugee camps that are within their borders. All of these acts do not sit well with human rights activist, organizations that fight for the protection of human rights such as the UNHCR and also civil societies. Some failures that will be discussed include; failure to provide clear provisions on the issue of burden sharing; that is how are countries supposed to share the burden of hosting refugees and why some countries have been left to carry the burden alone? Lack of relevance and applicability on emergent issues in the 21st century for example the issue of 'climate refugees'; Failure to provide clear provisions on the issue of jurisdiction, responsibility and access to asylum; Having a narrow approach and therefore warranting the need to broaden the narrow confines that international refugee law has

been isolated in. The chapter will discuss these and a few other shortcomings in the international law that have led to its failure.

Chapter 4 of this research study will identify and discuss exhaustively recommendations given by scholars on how to best tackle the inadequacies that have hindered refugee law from performing some of its duties. This chapter will analyze every inadequacy and recommendation concurrently. The researcher will then proceed to give critics on these areas stating the different views of different scholars and what these scholars view as the shortcomings of the recommendations provided.

Chapter 5 of this research will begin by giving steps that the researcher would recommend to help mitigate the shortcomings of the law. The researcher will deal with each problem stating what she thinks would be the best approach to deal with the problems that have caused the law to failure to prevent the refugee catastrophe. The researcher will then give a comprehensive brief on the contents of previous chapters and what their findings are and finally conclude the research study.

CHAPTER TWO

INTERNATIONAL LAW AND THE REFUGEE

2.0 Introduction

This chapter of the academic study will discuss the correlation between International law and refugees. In order to achieve comprehensive results in identifying this relationship, the researcher will begin by defining international law, its sources and it will also state some of its branches. The researcher will then proceed to give more details on some of the divisions of international law that are associated with refugees. These international laws are humanitarian law, refugee law and human rights law.

Under refugee law the researcher will discuss the meaning of who a refugee is as provided under this law and further on discuss different amendments made to this definition. The Researcher will then proceed to discuss steps that states and the UNHCR take when deciding on who qualifies for a refugee status. The exceptions to when one can be granted this status will also be discussed. The researcher will then discuss the role that the other two international laws listed above play in providing security for refugees and the adequacy of all three international laws. The researcher will then close by giving a detailed conclusion on what has been identified in the chapter.

2.1 International Law and Refugees

This is the law used by states to conduct their relations with each other.⁵¹ It creates and sets down norms, standards and rules on how states should interact with each other when it comes to various issues such as conflict, diplomacy, humanitarian issues, environment issues and many others. It therefore affords a means for nations to exercise more reliable, unwavering,

⁵¹ Payne. "An Introduction to the principles of Morals and Legislations, London." P.6, retrieved 2012-12-05.

and organized relations with each other.⁵² International Law has several sources which include the following; international custom which is general practice that is accepted as law by civil nations, treaties and conventions, judicial decisions, scholarly writings or works by renowned scholars. International law has several branches which include but are not limited to human rights law, refugee law, and humanitarian law which divisions deal with safeguarding refugees.

Worth noting is that International law imposes duties and obligations primarily on states and not on individuals unlike is the case of municipal or domestic law which mostly imposes on individuals. Due to the fact that there is no central government in the world system, we do not have a mechanism that will make sure that parties comply with the provisions of the law, therefore it is upon member nations' willingness to abide by provisions of this law. It is not unheard of to have states that may decide to decline to follow the rules provided due to various reasons, such as the fact that the provisions are not in line with what their domestic laws provide.

This however, in most cases may not sit well with the international community and it may lead to economic sanctions or even military interference. However, where individuals in power have committed very serious crimes, their cases are dealt with at the International Criminal Court. These crimes are those of mass killings, crimes committed during war, the planning, initiation and execution of a belligerent crime using military forces and crimes against humanity which include murder, rape, persecution and many other crimes. Many individuals including former presidents have been indicted for committing the above atrocities.

The history of refugee law dates back to the 19th century, when the international community focused on preventing another world war from occurring. The Nazi's had committed very serious violations of international and it is only after the second war that the

⁵² Slomanson, William R. "Palestinian Statehood: A Secessionist Dialogue." *Miskolc J. Int'l L.* 8 (2011): 1.

drive to enact more comprehensive laws became apparent.⁵³ There was need to have a global agreement which provided for the rights of individuals, as this would help making the provisions on human rights more effective.⁵⁴ The first ever substantial contribution to the protection of refugees was during the 183rd session of the United Nations in Paris, France on December 10th in the year 1948 when the (UDHR) came into force. At the time 48 members of the UN voted in favor of the Declaration. The purpose of this statute was to define essential autonomies and human rights that appeared in the Charter, a constitutive act of the UN.

As the second world war went on the Allies embraced four main freedoms and these included the freedom to speak freely, the freedom to worship any God of one's choice, to live a fear free life and finally the freedom of not lacking anything one desired these were adopted as some of the objectives that they intended to achieve through war.⁵⁵ The Charter upheld the importance of safeguarding key human rights. It ensured that all respected and adhered to the provisions of civil rights and vital freedoms. This is irrespective of one's race, gender, dialectal or belief".⁵⁶

Protection of refugees is grounded under Article 14 (1), which gives any human being the right to sought refuge from mistreatment in any country that he or she so wishes.⁵⁷ It is on this article that the Convention on the Status of Refugees, was enacted. This was in 1951. The Convention is what governs all matters that relate to international refugee protection today.⁵⁸ In 1967, a Protocol was enacted, further the scope of the mandate of the Convention by removing the geographical and time-based limitations. The Convention and Protocol have been

⁵³ Union, Inter-Parliamentary. "„Universal Declaration of Human Rights“." (1997).

⁵⁴ "UDHR – History of human rights". *Universalrights.net*. Retrieved 2012-07-07.

⁵⁵ Bodnar, John. *The " Good War" in American Memory*. JHU Press, 2010.

⁵⁶Union, Inter-Parliamentary. "„Universal Declaration of Human Rights“." (1997).

⁵⁷ Universal Declaration of Human Rights,1997

⁵⁸ Jovanovski, Zhan. "The Legal Protection of Refugee and International Security." *Social Sciences* 8, no. 3 (2019): 125-131.

complemented by subsidiary legislation enacted in different regions in the world.⁵⁹ The Convention is fortified by several key ideologies, which include non-discrimination which ensures that these fundamental rights are applied to each person in spite of their gender or race, the principle of non-penalization that ensures that States do not penalize asylum seekers for entering into their territory illegally and non-refoulment which prevents States from returning persons seeking refuge back to where they fear being persecuted.

2.1.1 Who is a Refugee?

The Convention provides a universal definition on who is a refugee. It describes a refugee to be any human being who due to substantiated fear of mistreatment for certain causes such as political affiliations, gender, ethnicity and even membership to some groups is not willing to return back home.⁶⁰

This definition however, was to a certain degree restrictive as it only applied to events that occurred before 1951 in Europe. With time new occurrences were experienced and these saw the emergence of new refugee situations that had not been previously addressed by the 1951 Convention. A need to implement an instrument that would cater for these new situations arose. This is where the Protocol came in to help mitigate these shortcomings was prepared. It started to be applied on the 4th day of October in 1967.

It aimed at addressing the geographical limitations of the Convention. The Protocol provides that the events referred to under the first Article of the Convention can be applied to the happenings of Europe and also to those of different regions that occurred before the 1st day of January 1951. This widened the scope of protection from a mere region to the whole world.

⁵⁹ The OAU (AU) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, the European Union Council Directive 2004/83/EC of 29 April 2004, The Cartagena Declaration on Refugees.

⁶⁰ Article 1 (A) (2), Convention on the Protection of Refugees, 1951.

It ensured that each and every person who required protection against persecution due to the reasons stated above was protected.⁶¹

This however, according to some regions that experience high populations of refugees such as the Americas and Africa was not adequate enough and thus they came up with laws that helped further supplement the convention and the protocol.⁶² The OAU Convention expounds on the status of an individual forced to flee his home so as to pursue refuge somewhere else because his home is currently experiencing external aggression, he is unable to secure employment and thus has travelled in search of employment, foreign domination or events that are causing serious disturbance to public order. The disturbance does not have to be all over the country but can also be in a certain part of the country of origin.

Worth noting however that is the AU has a convention that speaks to the protection of IDPS.⁶³ The UNHCR also provides protection for IDPS and stateless persons. The reason for this statute is because the description given under the Convention and the Protocol fails in not considering IDPS as part of refugees.⁶⁴

Refugee law has numerous instruments both globally and within the regions. Some of these instruments are: The 1951, Convention and the 1967 Optional Protocol which are key statutes in matters regarding refugees. There is also the UDHR and many additional Statutes and agreements.⁶⁵

2.2 Determination of Refugee Status

⁶¹ Article 1(B) (1), 1967 Protocol on the Protection of Refugees.

⁶² Article 3 of the Cartagena Declaration on Refugees and Article 1(2) of the 1969, OAU Convention Governing Specific Aspects of the Refugees Problem in Africa

⁶³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

⁶⁴ <http://www.ijrcenter.org>refugee-law>.

⁶⁵ OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, Rights, European, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The responsibility of determining whether one qualifies for a refugee status falls upon states or governments and the UNHCR in special cases of non-ratification. This section discusses the different ways in which states and the UNHCR determine who is eligible for refugee status.

2.2.1 Refugee Status Determination by States

Refugee Status Determination (RSD), is the method used by governments or the UNHCR to decide who is eligible to be granted refugee status. A person is eligible if they meet the requirements of the Convention or those of any national or regional legislations.⁶⁶This process is very key as it ensures that persons seeking asylum are given the protection they deserve. It helps in upholding the provisions of the law in relation to respecting human rights,

This process is very different across the board as each and every State has its own mechanism of undertaking this process. This is even with the fact that the law provides a uniform description of who is a refugee.⁶⁷ For an application to be granted the persecution against the person seeking asylum must have been based on at least one or more reasons as provided under the Convention.

States have provisions under their national legislations that provide ways in which to determine refugee status, however the one that is most common across the board is asylum adjudication. These are done a person designated by a government department. The official proceeds by undertaking an interview on the person seeking asylum so as to assess evidence provided in the given case and the nature of the asylum seeker. It is upon the person hoping to get help to convince the official that whether asylum should be granted. The asylum seeker is allowed to produce as much supporting evidence as he or she can acquire. The evidence

⁶⁶ <https://www.unhcr.org/refugee-status-determination.html>

⁶⁷ Hamlin, Rebecca. "International law and administrative insulation: a comparison of refugee status determination regimes in the United States, Canada, and Australia." *Law & Social Inquiry* 37, no. 4 (2012): 933-968.

supporting this application may include a report from the country of origin, reports from international organizations, articles that have been written on the country of origin or the situation therein, or even affidavits sworn by witnesses who know the person seeking asylum. The asylum seeker is also allowed to bring witnesses who will testify on why he or she should be granted asylum. The witnesses however, give their evidence separately and the asylum seeker is not allowed to be in the room. The official must give the asylum seeker an explanation as to why he or she has failed to grant the applicant's application and if not satisfied with the explanation the applicant or asylum seeker may appeal this decision.

There are restrictions in some countries however, on how many days after entry one may seek asylum in a country. Article 31, states that a State may not decline an asylum seekers application merely because he or she entered the country irregularly that is without any form of documentation this is referred to as non-penalization under refugee law.⁶⁸ A country cannot remove a person seeking asylum unless all avenues have been exhausted and it is found that there are no other ways of addressing the issue. Persons who fail to qualify for asylum have the right to be protected up to a certain limit. This limits include the protection from being extradited or returned to their home country where there is a possibility of suffering adversely.⁶⁹ States also provide other forms of protection which include complementary protection where States prevent removal of unsuccessful applicant from boundaries, secondary protection, and Provisional Protected Status.⁷⁰

According to Michael Kagan (2002, 367) undertaking a credibility test on a person who has sought refuge is one of the most important steps. Many are the times that the applicants falsify their applications in order to enter countries that are doing well without a well-founded

⁶⁸ Article 31, Convention on the Status of Refugees, 1951.

⁶⁹ Article 3, Convention on the Status of Refugees, 1951.

⁷⁰ <https://www.cesda.org>

reason as to why they flee from their country of origination.⁷¹The decisions on the applicant's credibility are based on the judgment of the government official or the judgment of the agency's official in some cases. This means that they vary from one adjudicator to the other. Some of the people who genuinely need protection in some cases are not able to convince the adjudicators of their genuine need to be resettled. Some countries such as the US and Canada have provided guidelines on what to consider during an applicant's testimony. This is what should guide the official's decision to either grant or disapprove an application.

2.2.2 Determination of Refugee Status by the UNHCR

Although States are under an obligation to determine whether to grant refugee status or not some other states have opted not to ratify the Convention of 1951. These countries automatically do not have efficient national asylum procedures and RSD procedures. Most of these countries according to the UNHCR are in the Middle East and they experience high populations of refugees. Examples of such countries include Egypt, Pakistan and India. RSD proceedings in these countries are undertaken by the UNHCR through its field offices.⁷²

The UNHCR carries out similar process as the one done by individual States.⁷³ The asylum seekers begin by providing their details to the UNHCR field office within their locality after which they attend an interview with a UNHCR eligibility Officer. The duty of this officer is to examine the asylum seeker's application in order to determine whether he or she qualifies for asylum.⁷⁴ During this interview the asylum seeker may bring witnesses who will contribute information that is relevant to support their application. The eligibility Officer is the one to determine whether the applicant is going to be granted asylum or not. The UNHCR provides

⁷¹ Kagan, Michael. "Is Truth in the Eye of the Beholder-Objective Credibility Assessment in Refugee Status Determination?" *Geo. Immigr. LJ* 17 (2002): 367.

⁷² <https://www.unhcr.org/refugee-status-determination.html>

⁷³ <https://www.unhcr.org/refugee-status-determination.html>

⁷⁴ UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate 4.3.1-3 (2003).

the asylum seekers with an opportunity to appeal the officer's decision if they feel aggrieved by what has been decided upon.

Upon the completion of the determination process by the eligibility Officer the applicant is issued with an UNHCR Refugee Certificate. The purpose of this certificate is to show that its holder is a refugee and he or she requires to be provided with protection. Unfortunately, in real life the fact that one holds a refugee certificate, is complete assurance that he or she will be able to work neither does it guarantee absolute protection from the state that the refugee fled from.⁷⁵ The UNHCR also facilitates the resettlement of successful asylum seekers to third countries.⁷⁶

The UN agency in many cases handles cases that involve individuals only however, there cases in which large groups of persons who have sought asylum. In such cases if it is obvious that the group requires protection then the agency may grant asylum based on how the group presents itself or on the basis of first impression this can only change if there is contrary information on the same.⁷⁷ This was done by the UNHCR in southern and central Iraq in 2007.⁷⁸

2.2.3 Exceptions

Article 1(D) to (F) of the Convention give a number of reasons why a person may not be eligible for the grant of asylum. These exceptions are as follows; any person receiving protection from another agency of the UN apart from the refugee agency is not eligible. At the time of enactment this provision applied to the citizens of Korea who were getting help from the Korean Reconstruction Agency (UNKRA) under the UN and also the Palestinians who

⁷⁵ UNHCR, Global Focus: Malaysia 2016 Operational Context.

⁷⁶ UNHCR, Resettlement Handbook, Ch. 3, at 77 (2011)

⁷⁷ UNHCR, Resettlement Handbook, 2011.

⁷⁸ UNHCR, Procedural Standards for Refugee Status Determination under UNHCR'S Mandate

were also benefitting from Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) established by the UN.⁷⁹

The determination of whether one should be granted asylum also does not apply to the following persons; any person who already possess the status and every other privilege that comes with it. Such a person is already acknowledged by the authority in the country where they have sought asylum.⁸⁰ Someone who has perpetrated serious crimes against fellow human beings contrary to the provisions law, anybody who commits a crime that is not in relation to politics outside the borders of the country that he has sought refuge in, and finally any person who has been found guilty of an offence that is contrary to what international law provides.

2.3 Refugees and Special Protections of International Refugee Law

2.3.1 International Humanitarian Law and Refugees

Humanitarian law is the law that protects persons who end up at the center of battle. It is also referred to as the law of war. In our case the law's main purpose is to protect refugees who are in war torn countries or arrears from the hostilities of war. It applies only during conflict where arms are used.⁸¹The ICRC's responsibility is to promote the law of war and ensuring that states comply with the same. Apart from regulating how people conduct war the law also protects persons who have already left the war zone.⁸² Humanitarian law imposes legal obligations on the parties involved.⁸³

Humanitarian law has over the years ensure that refugees are protected in war zone areas. They are protected from the adverse results of war provided that they are not taking direct part in them and it also grants them additional rights and protections.⁸⁴ The law allows

⁷⁹ Handbook on Procedures for Determining Refugee Status under the 1951 Convention & the 1967 Protocol relating to the Status of Refugees, para. 142

⁸⁰ Article 1(E), Convention on the Status of Refugees, 1951.

⁸¹ <https://www.icrc.org.international-humanitarian-law>

⁸² <https://www.iawj.org.international-humanitarian-law>.

⁸³ Ibid.

⁸⁴ Ibid.

the refugees to move from any area or country where there is war. Despite this movement they continue to have entitlement to rights and protections entitled to them. This ensures that their existence is protected in cases where the control put in place by the hosting nation is too stringent to the extent that they are unable to protect themselves.

Humanitarian Law provides that a party to the conflict may place the refugees in assigned residence as a measure to protect them. However, this is the strictest measure of control that the states can exercise towards refugees in its territory. The states may not transfer refugees to territories where they may fear persecution due to their political opinions or religion. The fourth amendment to the Geneva Convention further protects refugees by providing further protection through preventing any state from declaring that a refugee is an enemy alien and protection from arrest if the state which they fled occupies the asylum states unless they have committed a crime after the occupation.

2.3.2 International Human Rights Law and Refugees.

Human rights law is tasked with the duty of promoting the human rights of persons. This protection is applied at international, regional or domestic levels. Worth noting is that this law is not binding however, States consider it a political obligation to protect human rights.

Each person possess human rights from the moment of their birth. International Human Rights law protects refugees by ensuring that they have the right to be from any mistreatment torture or inhumane treatment, the right to be able to freely express one's feelings on issues, the right to think whatever you wish or to have an independent opinion, the right to freely worship whomever you feel comfortable worshipping, the right to have and live a healthy and secure life, the right to be free and not confined in any prison or detention facility, the right to security and the freedom from being discriminated against.⁸⁵ This is very important as the

⁸⁵ https://en.m.wikipedia.org/wiki/Refugee_law

human rights law applies to all States and human rights must be observed by each and every entity in the international community regardless of its economic might or military power.

The law also is very vocal when it comes to RSD. This is because State parties and the UNHCR, are required to apply the provisos of human rights. Refugee law is seen to be confronting issues that are at the top of the agenda on human rights. Some of the issues on this agenda include the discussion on gender. In determining the issues of refugees who are women, the provisions of human rights law have been applied. Violence against women is considered as having the same magnitude as persecution. Both laws have greatly contributed to furthering human rights law and they have made a substantial impact in the international community.⁸⁶

Human rights and refugee law complement each other as one cannot completely fulfil its mandate without reference to the other. Both laws purpose to ensure that persons protected under their provisions receive the protection intended. The only main difference is that one applies to all human beings while the other applies to a certain group of people.

2.4 Conclusion

In conclusion it is safe to therefore say that these three branches of international law operate concurrently and that none is similar to the other. Each one requires the other in order to fulfil its envisioned mandate. They are different from each but operate to complement one another. They all have different mandates and goals that they envision to achieve.

A look at the information provided above about International law in relation to refugees, it is safe to say that no chances are taken when addressing the subject of refugees as this topic continues to take center stage all over the world. This is important as it helps provide guidelines on how states can deal with this growing concern that is refugees. The next chapter will outline

⁸⁶ Anker, Deborah E. "Refugee law, gender, and the human rights paradigm." In *International Refugee Law*, pp. 237-258. Routledge, 2017.

the challenges that have caused international refugee law to fail in preventing the plight that we are currently experiencing on the issue of refugees.

CHAPTER THREE
ADEQUACY OF INTERNATIONAL LAWS TO RESOLVE THE 21ST CENTURY
REFUGEE CRISIS

3.0 Introduction

This chapter will discuss in depth the reasons why the law on refugees was not capable of preventing the refugee crisis in the 21st century, despite praises by the UNHCR and the fact that it has been able to mostly achieve its traditional purpose as is stated by scholars. The scholars believe that the law has not failed but that it only requires various amendments in order to make it applicable to current situations.

Some of the failures that will be discussed under this chapter will include the following; the law's failure to give clear provisions on how 'burden' is to be shared among states, in order to ensure that the responsibility owed to persons seeking asylum is shouldered equally. This will prevent burdening of states that neighbor countries that have a high flight risk from having to cater for large numbers yet they do not have enough resources to handle such large groups. The researcher will also discuss its failure to provide clear provisions on the issue of jurisdiction and responsibility and access to asylum. The researcher will then finally discuss its narrow approach to issues relating to refugees. Under this the researcher will discuss the law's narrow description of a refugee, the law's provision on steps taken when deciding whether one should be granted the status of a refugee, the law's provision on the safeguards put in place for the safety of migrants and persons who seek refuge in other countries and its lack of a provision for a mechanism for enforcement.

The reason why the world is facing the global refugee crisis during the 21st century is because international laws have failed to achieve what they were intended to achieve due to one reason or the other. Some of the reasons include, the fact that these laws were enacted in

previous centuries when the issues that the world was facing were far much different from what we are currently experiencing in the 21st century. It is therefore safe to say that these three laws lack adequacy in resolving the current refugee crisis. It is only through some sort of amendments to these laws that we will begin to see effectiveness of these laws to the current situations as these amendments will help in crafting the laws to best handle current situations.

3.1 Reasons for Failure of International Refugee Law

3.1.1 Narrowness of the Provisions of International Law

The law on refugees according to various scholars, can be said to have a narrow perspective on some of the issues that it deals with in its provisions. This is considered one of the very main reasons why it has failed to prevent the refugee crisis globally. This section will proceed to examine some of these provisions and discuss how they affect refugees or persons seeking asylum.

Before the researcher proceeds to handle the various provisions the reader should take cognizance of the fact that the researcher does not mean that because this law has failed to address certain key issues in its provisions, that that means that the law is invalid or that it lacks relevance. Contrary to that it is important to note that its traditional function must not be ignored. George Okoth-Obbo the Assistant Secretary General of the UN, states that the role that traditional refugee law plays must continue to be reiterated and that its failure to deal with emerging issues does not mean that we should not acknowledge the role that the law has played in ensuring that refugees are protected and that States adhere to the provisions on the protection through the years.⁸⁷ He further states that as is common practice just because a law is not able to mitigate issues that were not initial there during its promulgation this does not make that law

⁸⁷ <https://www.refworld.org>

invalid. However this only goes to show that we need to build bridges so as to mitigate its shortcomings.⁸⁸

This notwithstanding this Chapter will identify and deliberate in depth on what the shortcomings of this law are. The following are some of the main limitations.

3.1.1.1 Definition of a Refugee is Limited

The Convention of 1951 and its Protocol of 1961 do not adequately answer the query of who is defined as a refugee? Their definition is quite narrow and therefore most people who require to relocate to other countries as their livelihoods are in danger from external factors such as poverty, hunger and lack of basic amenities or even environmental degradation are not considered as persons who require to be granted refugee status.⁸⁹The Convention fails to consider that not all countries are the same in terms of the abundance of resources and their populations. Third world countries often have larger populations as compared to the already developed countries. Thus resources in third world countries are in most cases not adequate enough to cater for the needs of additional populations. Many are the times that people die because of they lack food, water or even medical attention.

The term persecution is also not clearly defined under this law and it can also be said to be a shortcoming as States parties end up defining the term according to what suits them best. In actual sense, the reasons of persecution give too much latitude for a limited application by parties. This means that those people who fear being tortured in their countries due to reasons not aforementioned such as gender are not eligible for the grant of asylum.

The term refugee as is stated according to the Convention, means that it is only those that have been forcefully displaced due to the grounds provided under this provision that are

⁸⁸ Ibid

⁸⁹ Gunning, Isabelle R. "Expanding the international definition of refugee: A multicultural view." *Fordam Int'l LJ* 13 (1989): 35.

eligible for the grant of asylum by states. This leaves out a large number of persons as many do not fit into this category but have valid reasons for the grant of asylum. A majority of persons seeking asylum according to the UNHCR are yet to be granted the status of a refugee but they still pursue refuge in various countries. Does this mean that the law on the protection of refugees cannot be applied to such persons?⁹⁰

Over the years the issue of forced displacement has evolved from one that is mainly due to political reasons to one that is occasioned by the need for survival.⁹¹ The destruction of the environment and growth in the world's population has meant that there is a decline in natural resources and therefore we are not able to adequately enjoy these resources leading to conflict between people and eventually forced displacement.

The definition then locks out persons who are genuinely in need of help as their survival depends on whether or not they will be granted asylum. The legitimate repercussions of displacement that have been caused by forces other than those that have been provided for under the Convention, are not adequately addressed. Such persons have similar protection needs as those who are protected under the Convention. The displaced persons may for example, be in a legal crisis, they may have lost their identification documents or land title documents, or even worse family members or widows whose husbands died on the battleground and because of this fact their husbands did not manage to leave with the family and so these women are the ones heading the households, or even children who for one reason or the other did not manage to have their parents or guardians accompany them.⁹²

The question then is how do we deal with mixed flow of refugees with the definition that the Convention provides? How are states supposed to determine who is entitled to help

⁹⁰ Reza Majd. "The Limitations of International Refugee Law in Dealing with." Majd, 26/08/2018.

⁹¹ <https://www.unhcr.org/5975a93e7.pdf>

⁹² Feller, Erika. "The Refugee Convention at 60: still fit for its purpose." In *Statement delivered at Workshop, 'Refugees and the Refugee Convention*, vol. 60. 2014.

and who is not and how do you ensure that those that are not entitled to help are resettled back in their countries safely. The description of a refugee under the convention is insufficient as it only provides for the safety of persons who have refugee status but fails to consider those who still seek asylum.⁹³ This explanation has a limiting factor as many have ended being left out on the grounds that they do not fit into the description provided by the law.

3.1.1.2 Determination of Refugee Status

The Statute fails to give a clear indication on methods of determining if one qualifies to be granted refugee status or not. It is upon States parties to decide on how the proceedings for determination will be conducted. States implement laws on asylum based on their national interests which include their resources, the countries security concerns and any forced migrations that have occurred in the past. This therefore means that there is no uniformity in the legislation among states.

Providing asylum according to many State parties is seen as a costly burden, as States have to ensure that once they grant asylum to those who seek it they are responsible for ensuring that the refugees lead a comfortable and secure life. This even with the fact that the burden is not equally distributed among States. This greatly influences the States decision to agree to grant asylum and obviously it does so negatively.⁹⁴ Many States also decline to grant asylum as this very persons granted asylum or refugee status become the reason why there are societal rigidities and a contentious administrative problem as it is very hard to filter who is good and who is not with mixed migration. This very factor will mean that because the Convention fails to provide clearly on how States should determine who is eligible for asylum then States will only provide it when they fill that they are not in danger or it will benefit them in one way or

⁹³ Ibid

⁹⁴ Feller, Erika. "The Refugee Convention at 60: still fit for its purpose." In *Statement delivered at Workshop, 'Refugees and the Refugee Convention*, vol. 60. 2014.

another. States are mostly self-help just as stated in the classical realism theory that is one of the guiding principle in this research. This is to mean that States are quite selfish and so many are the people who fail to secure asylum, as either States decide to place very stringent domestic laws so as to frustrate asylum seekers, or they just decide to wrongfully or narrowly interpret what the Convention provides when it comes to persons seeking asylum or refugee status.⁹⁵

This will mean that persons with genuine cases and are vulnerable to certain abuses may not have even the slightest chance of receiving a chance of protection from the country they have sought it from and they end up having to return to the countries they were fleeing from. This failure to provide a procedure that is uniform across the board because States do not want to lose a small part of their sovereignty is very detrimental to the protection of human rights which obviously also apply to migrants or asylum seekers. This adds to the many reasons that have led to the law's failure as some of the people who really need its protection have ended up being at the mercy of States and knowing their nature we all know that in some cases that would mean justice is not served. The fact that providing asylum nowadays does not have the same benefits as it did previously means that States are less willing to do so and so the political will continues to decline by the day.

3.1.1.3 The Level of Protection

The Convention begins to bind States once a person is granted asylum. The law only addresses rights of refugees, however it does not consider the process of determining who qualifies to be referred to as one. This procedure is left to governments and regional blocs to determine. States may use these procedures or other methods to avoid fulfilling their obligations under the law.⁹⁶ Persecution is not clearly defined and therefore states are left to

⁹⁵ Feller, Erika. "The Refugee Convention at 60: still fit for its purpose." In *Statement delivered at Workshop, Refugees and the Refugee Convention*, vol. 60. 2014.

⁹⁶ Hoffman Lohr (n13)1087

determine how to define it and this may mean that they define according to their own self-interest.

The provision or description given of who a Refugee is under international refugee law offers no protection for persons seeking asylum due to causes of natural disaster or violence.⁹⁷ The pre-requisite for one to be considered a refugee is only limited to any person with a substantiated fright of being mistreated in their country of nationality. In light of this it simply means that those who flee due to other reasons are not considered suitable. This culminates to states having more discretion in the current refugee catastrophe, meaning that international refugee law has less power in tackling the same. The law does not legally bind States to protect refugees and this is left for the States to decide whether to do it or not. This therefore simply means that the law is largely reliant on the support of the states that have ratified the Convention. The law fails in the fact that it does not consider key situations that have recently come up in the modern situations of forced migration.⁹⁸

Granting of asylum has become a key subject under the main topic of the refugee problem that the world is currently expecting. The biggest problem that we are currently facing is how to determine persons who are entitled to have protection, for how long the protection should be provided, and in what circumstances should protection be provided.⁹⁹ It has become more complicated than it used as the reasons for displacement have increased as the international environment has increasingly become unpredictable and very insecure.

3.1.2 Burden Sharing

⁹⁷Khan, Azfer Ali. "Can international law manage refugee crises?" *Oxford U. Undergraduate LJ* (2016): 54.

⁹⁸ Hoffman Lohr (n13)1087

⁹⁹ Kneebone, Susan, Dallal Stevens, and Loretta Baldassar. "The Refugee Convention at 60: still fit for purpose? Protection tools for protection needs." In *Refugee Protection and the Role of Law*, pp. 70-84. Routledge, 2014.

International refugee law in the first instance does not clearly provide a system on how states should shoulder the responsibility of refugees and thus this has greatly led to some countries having to accommodate very large figures of migrants. Most of the countries affected neighbor countries that host some of the largest number of asylum seekers. The Convention merely places a responsibility on States that it is their duty to protect persons who at the moment are not under protection of their governments.

3.1.2.1 Responsibility and Jurisdiction

For responsibility sharing among States to work then these States must be ready to cooperate with each other as this type of sharing means that States A must be ready to take on the citizens from State B.¹⁰⁰ This type of responsibility also means that in line with the provisions of the law States are not expected to return persons who have sought asylum within their borders back to their countries where they feel threatened. This responsibility will fall on the State where the refugee is found and is subject to its jurisdiction. This in most cases leads to unequal distribution.¹⁰¹

The law fails in providing clearly what the responsibilities of other States are in such a situation. Although some States may voluntarily lend a helping hand to states that have a larger responsibility not all identify with the fact that they have a legal obligation to do so. They may accept to cooperate only because they are interested in gaining something from the cooperation. Some of these gains may include scratching one another's back, maintenance of a political community or institutions or the need to avoid or accelerate a political crisis. There are also States that are committed to ensure the protection of refugees.

¹⁰⁰ Newland, Kathleen. "Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations Short of Mass Influx." *Migration Policy Institute* (2011): 1-11.

¹⁰¹ Newland, Kathleen. "Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations Short of Mass Influx." *Migration Policy Institute* (2011): 1-11.

The laws failure to clearly give guidelines on how states should cooperate when it comes to issues of burden sharing is one of the very core reasons why it has failed to prevent the refugee crisis that the world is currently experiencing. The law needs to be clearer on some of the following issues, i) how should States deal with the issue of repatriation of refugees? ii) Where should a refugee claim protection, is it in the first country they enter? iii) Should a country help a neighboring State that is overwhelmed by the number of refugees that are being hosted? These are some of the critical issues that the law fails to address. This is what has led to the most vulnerable countries having the largest numbers of persons who have forcefully displaced of persons who seek asylum in the world. Some of the countries that have these number include countries such as Turkey, Pakistan, and Lebanon. It is important to note, that USA's economy is three times bigger than that of Turkey which according to the World Bank has a larger economy as compared to the other two countries. As at 2019, Turkey accommodates a total number of 3.66 million registered refugees within its border this is the highest number globally.

The absence of clear provisions on the sharing of burden is an obvious weakness in cases of large arrivals of asylum seekers. In 2011, the World Bank released a report that looked at the problems that host countries underwent due to major refugee arrivals and the opportunities that this States benefited from due to the same.^{102,103} The findings show that the countries with the biggest population of refugees that is around 75% are those that neighbor the countries that are affected by the mass flight of persons. It is very common to find that the mass population of refugees will be found in fragile or underdeveloped countries, border regions, or areas whose economic, political and environmental factors are hardest hit.¹⁰⁴

¹⁰² Margarita Puerto Gomez and Asger Christensen "The Impacts of Refugees on Neighbouring Countries. A Development Challenge, "World Development Report 2011 Background Note, World Bank.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

The Refugee Convention does not directly deal with sharing of responsibilities nor does it provide any procedure to ensure that States are adequately compensated for accepting or helping more refugees than other countries are helping. There is therefore a lacuna in refugee law.

The law fails in providing clear provisions on burden sharing and thus the same is left to States to decide and do what they feel or view as morally right as a collective obligation to ensure equitable burden sharing does not exist under the legal framework. In the past it was well known that refugees were the responsibility of each and every State. The responsibility to protect refugees is assigned to individual or in particular to States on whose territory seeks asylum or refuge. The reason why the responsibility falls on States is because the Convention does not give the UNHCR an operational mandate.¹⁰⁵ The non-refoulement principle ensures that States are obligated not to send back person seeking asylum within its borders to the place of origin as they are in danger of being persecuted or suffering grave harm, does not present a valid legal basis for States to collectively have an obligation to protect refugees.

Most of the countries that are willing to accept refugees have no capability in terms of resources available to take care of big numbers of refugees mainly because these countries are mostly developing or third world countries in sub-Saharan Africa. Consequently, although the Convention does not give the UNHCR an operational mandate the agency has become quite operational over the years and has been stripped of its temporary nature so as to do the bidding of those who can pay. The non-refoulement principle according to a few members States and International Organizations is being abused, so as to prevent equitable distribution of refugees between developed and developing countries, with the latter having to shoulder the largest

¹⁰⁵Ineli-Ciger, Meltem. "The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?" *Refugee Survey Quarterly* 38, no. 2 (2019): 115-138.

burden yet they have the least resources as compared to the already developed countries. The principle's main objective link is to ensure that no person seeking asylum is sent back home this negatively affects States that border the States of origin as they are forced to host large numbers as they do not want to contravene the provisions of law.

Refugee law fails in that it does not clearly provide on the responsibility of burden sharing and thus the less powerful countries end up shouldering majority of the responsibility while the more capable countries continue to avoid fulfilling their responsibilities. This has contributed to the refugee crisis as some of the persons seeking refuge end up having to return back to their countries or even end up having to live under very deplorable states, this is obviously a very key failure.

The question of whether the UNHCR can be considered a burden sharing mechanism is one that was discussed during the SHARES Expert Seminar in Amsterdam in 2011.¹⁰⁶ The participants tried to identify whether it is a mechanism that could be used to implement shared responsibility. However, the answer to this was that because the Convention had not given the UNHCR an operational mandate then it was not possible for it to act as such a mechanism as its mandate was limited.¹⁰⁷ And even though the continuing urgent refugee needs led to a change in the agency's mandate making it more operational this is not enough to bridge the gap in terms of responsibility sharing.

The activities that the UNHCR undertakes are those that are guided by the need for humanitarian assistance and not by the principles of equity, and because it only relies on being funded mostly by members of the UN most of the times it runs into budgetary and political

¹⁰⁶ Expert Seminar on 'Shared responsibility in International Refugee law held at Amsterdam Center for International Law, University of Amsterdam May 30, 2011, <http://www.sharesproject.nl/wp-content/uploads/2012/03/Report-Expert-Seminar-Refugee-Law-2.pdf>

¹⁰⁷ Ibid.

constraints as it is controlled by those who contribute the most and this case those are the already developed countries.

The obligation that States have of *non-refoulement* is now what mainly prevents States from failing to fulfil their responsibility in terms of refugees.¹⁰⁸ The principle is now considered persuasive law and it is seen to have attained the standing of internationally accepted norms.¹⁰⁹ However, this very norm in most cases makes it impossible for the sharing of responsibility. This is because a previously stated Neighbouring countries still bear the most brunt.

The law in this instance does not clearly state how responsibility is to be shared equally among States in order to avoid some States from having to carry larger loads. The principle was created in good faith and the objective was to achieve equal and sustainable responsibility sharing, however the law fails as it does not adequately address it and thus leads to its misinterpretation and misuse of the same to the disadvantage of other States.

3.1.2.3 Lack of Enforcement

The Convention although establishing agencies whose key responsibilities is safeguarding the rights of migrants and asylum seekers a good example being the UNHCR, fails to ensure that States are compelled to comply with its provisions and this has greatly hindered its success in ensuring protection is provided to all persons seeking asylum. This problem may have further been aggravated by the fact there is no world government and that the international system is hegemonic that is to say that some states have more power over others and thus they control world affairs. Many would say that the UN may be considered as

¹⁰⁸ Farmer, Alice. "Non-Refoulement and jus Cogens: Limiting anti-terror measures that threaten refugee protection." *Geo. Immigr. LJ* 23 (2008): 1.

¹⁰⁹ Ibid

the world's government but then again isn't it the interests of the most powerful countries that are mostly protected in the UN through its main organ the Security Council.

The Convention does not provide for any international body with power to supervise whether States comply or to even provide an interpretation that will bind States ensuring the comprehensible protection of refugees. The Convention provides that at the request of any of the parties disputes that are related to the Convention's interpretation or its application can only be brought before the ICJ.^{110 111}

The UNHCR lacks the mandate to interfere with states decisions when it comes to certain issues such as those of determining whether asylum should be granted or not. This discretion rests with individual states. The Convention fails in making the UNHCR an operational agency so as to ensure that it is capable of ensuring that States respect and follow what refugee law provides. The Agency has no power to intervene on certain matters involving refugees that are of utmost importance to achieving the Convention's objectives. How is the UNHCR supposed to deal with states that decline to grant asylum not because they feel that it is too costly for them? How does the agency deal with countries that control the world system if it is not able to enforce any rules to ensure that no matter which country has failed to adhere to the law there are steps or repercussions to ensure that they fulfil their responsibilities. With no repercussions for bad behavior what prevents States from continuing to misbehave? This is another good reason why the Convention has failed.

3.2 Conclusion

Under this Chapter the researcher mainly wanted to identify what has prevented international law from fulfilling its main objective. Failure of States to agree on equal

¹¹⁰ Kälin, Walter. "Supervising the 1951 Convention on the Status of Refugees: Article 35 and beyond." *prepared for the Cambridge Expert Roundtable (9-10 July 2001)* (2001).

¹¹¹Weis, Paul. "The 1967 Protocol relating to the status of refugees and some questions of the law of treaties." *Brit. YB Int'l L.* 42 (1967): 39.

responsibility sharing is one problem that continues to elicit mixed reactions among states and especially with the burden having been mainly placed on the less empowered countries to handle. This has meant that because the burden is too heavy to bear in some cases a majority of the developing countries have begun to turn away refugees as they feel that the super powers are taking advantage of the situation leading to such countries having huge number of refugees and very limited resources. A good example would be Kenya's plans to close Kakuma and Daadab refugee camps. Reasons given by these States is that the numbers have really soared and the resources available to cater for such numbers remain very limited, they are therefore unable to adequately provide for their citizens and refugees at the same. Some countries have also cited the fact that these refugee camps are hot beds of crime for jihadists and terrorists who end up causing insecurity in the said States.

The second problem that is, narrowness of international refugee law is also something that needs to be addressed as this will largely help in ensuring that states do not take advantage of the fact that they are the ones that determine who they should grant immunity, it will also encourage states to ensure that they adhere to international refugee law provisions as failure to do so will mean that there will be repercussions imposed on the defying state.

The drafters of this law during the 19th Century failed to anticipate the different scenarios that would emerge in the future and drafted the law to suit the problems that refugees were facing then. This has created a lacuna in the law in regard to matters that relate to refugees in the 21st Century. This however, does not mean that it should be totally invalidated as amendments to suit the current times would do the magic.

Another factor that may have led to its failure is weakened political will as compared to previous years. As the number of refugees grows the States that support the provisions of the Convention by providing asylum to refugees continues to reduce. This is due to reasons

that have been discussed earlier such as change in government tact due to fear of terrorist attacks or international crime. Britain in an effort to protect its citizens from such crimes opted to leave its regional block the European Union. Many States are now more skeptical to grant asylum because it no longer brings in the benefits that it used to. Being generous according to States does not add any value to the pursuit of national interests but in some cases it may have dire consequences. However, it is important to also note that political will coupled with various loopholes in the provisions of the Convention are the main reason why the law has failed to prevent the current refugee crisis.

International refugee law is not insufficient, or it does not lack the capability of dealing with the recent catastrophe and the emerging problems in the protection of refugees. However, even after agreeing with the above statement we ought not to forget that it is States that have failed to make adequate amendments to meet the current needs over the years. There have been attempts by States and regional economic communities to try mitigate these shortcomings there has even been literature done by various writers to feel help remedy the situation but the law still remains the same since 1951 when it was promulgated.

CHAPTER FOUR

RECOMMENDATIONS ON HOW TO SUPPLEMENT THE CONVENTION ON THE STATUS OF REFUGEES, 1951 AND CRITIQUES OF THESE RECOMMENDATIONS

4.0 Introduction

Chapter 4 of this research study will identify and discuss recommendations given by scholars on how to improve international refugee law. The researcher will also delve into the critics that have been made on the said recommendations.

The researcher in the previous chapter identifies two broad issues that have hindered international refugee law from preventing the refugee crisis that we are currently experiencing. The two are, failure to have clear provisions on the issue of burden sharing and its narrowness in some of the concepts that pertain to refugees. The researcher will proceed to give recommendations that have been given by scholars on how to mitigate these shortcomings.

4.1 Recommendations

Under the Migrants, every member of the UNGA came to an agreement that the protection of refugees and contributing towards the support of countries that shelter these persons were key responsibilities that needed to be shared equally.¹¹² The Assembly tasked the UNHCR with the responsibility of coming up with a framework that is the CRRF that would ensure that this happened. The result of this were two conventions that is the global compact on refugees (Refugee Compact) and the Global Compact for Safe, Orderly and Regular Migration (Migration Compact). These Compacts were affirmed by the member states on 17th December 2018 in the UNHCR's resolution on work done by the agency that is filed annually.

¹¹²Article 1(3), Charter of the United Nations; A/RES/25/2625.

The Refugee Compact predominantly purposes to address burden and responsibility sharing which is a key element not adequately discussed under previous agreements.¹¹³ The Migration Compact on the other hand is broader, and deals with several issues that aim to foster cooperation in order to ensure safe migration.¹¹⁴ The researcher will begin by giving the key recommendations that the UNHCR provides under the Refugee Compact to supplement the shortfalls of the Convention.

4.1.1 Recommendations on the narrowness of the law's provisions

4.1.1.1 Definition of a refugee

The Declaration addresses the movement of huge numbers of refugees and persons seeking asylum.¹¹⁵ The Declaration acknowledges the fact that the Convention fails to give a description that is broad enough and therefore it includes those forced to leave home of due to natural disasters that occur suddenly or continue to occur gradually. Some of these disasters may be due to natural causes such as climatic change. This group is not covered under the provisions of the Convention but is included under the Declaration.¹¹⁶

4.1.2 Critics

The New York Declaration under paragraphs 65-65 accords superiority to the 1951 Refugee Convention.¹¹⁷ The Declaration fails address the fact that the convention does not make reference to certain key issues such as complementary and subsidiary protection of refugees. There is also no reference the issue of temporary refuge which is very common. This

¹¹³ The Global Compact on Refugees. Paragraph 3, 2018.

¹¹⁴ Costello, Cathryn. "Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?" *International Journal of Refugee Law* 30, no. 4 (2019): 643-649.

¹¹⁵ <https://www.unhcr.org/584689257.pdf>

¹¹⁶ The New York Declaration for Refugees and Migrants. Paragraph 4, 19th September, 2016. Resolution 71/1

¹¹⁷ Costello, Cathryn. "Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?" *International Journal of Refugee Law* 30, no. 4 (2019): 643-649.

approach may mislead one to think that it captures most or all that is to do with issues of refugees and the forceful displacement of persons.¹¹⁸

None of these agreements consider the refugee as is seen under the UN refugee agency's mandate. It is very relevant to do so as the agency deals with many refugees some of whom are located in non-party States. The agency's mandate also applies to persons in different groups that are not covered under the Convention are protected as group.¹¹⁹

4.1.3 Recommendations on Burden Sharing

The global refugee compact emphasizes on the need for states to help each other in shouldering the burden of refugees.¹²⁰ The inclusion of such a provision is key as burden sharing is one of the most fundamental factors in matters refugees. The refugee compact tries to discuss the issue of responsibility sharing by advocating for the voluntary contributions of member states. These contributions may be in the form of philanthropic assistance or maybe through economic assistance in order to help grow the State's economy through assisting states' willingness to take in some of the asylum seekers from the host countries.¹²¹

The Compact further suggests that States that are not currently suffering from the refugee crisis, should assist in easing the pressure that is exerted on host countries as these countries end up exhausting their resources due to large populations.¹²² This is to say that other states and international organizations should assist countries that face large influxes of refugees in maintaining or handling this large burden. The help may come in form of finances or shared responsibility. Worth noting is that financial assistance according to past experience shows that such financial favors from either international financial organizations or even the private sector

¹¹⁸Costello, Cathryn. "Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?" *International Journal of Refugee Law* 30, no. 4 (2019): 643-649.

¹¹⁹ Ibid

¹²⁰ The Global Compact on Refugees. Paragraph 85, 2018.

¹²¹ Chimni, B. S. "Global Compact on Refugees: One step forward, two steps back." *International Journal of Refugee Law* 30, no. 4 (2019): 630-634.

¹²² Paragraph 85, Global Compact on Refugees.

in most cases are given with strings attached.¹²³ In many cases it is clear that some organizations in the private sector have no respect for the law as it does not legally bind them and therefore this leads to serious violations of the same.

The concept of shared responsibility is one that is yet to be fully realized as States have different levels of commitment when it comes to the sharing of responsibilities. The global fraternity has many more steps to take in order to achieve that the responsibility to protect refugees is shouldered equally. They each have a different understanding or level of commitment when it comes to responsibility sharing in relation to refugees. The calls to have equal responsibility sharing during global meetings has in mostly come from the developing States, as they are the leading refugee destinations in the world. Very few States that are already developed have agreed with developing States on the need to have this responsibility equally shared. They are however, not willing to honor what they claim to be lobbying for. In order for equal sharing of responsibilities to be achievable then States must be ready to cooperate with each other in order to achieve this.¹²⁴

4.1.4 Critics of this recommendation

Although the global refugee compact tends nothing but the best for refugees by advocating for equal sharing of responsibility, it fails to address the real issue. The ultimate goal would be to ensure that there is a strong system to protect refugees and this can be easily achieved through discouraging regimes such as the *non-entrée* regime which is prevents asylum seekers from accessing their countries.¹²⁵ Many people have lost their lives trying to access States that apply this principle. Most of these deaths occur in the Mediterranean Sea.¹²⁶

¹²³ For the World Bank, 'IDA18 Regional Sub-Window for Refugees and Host Communities', see <<http://ida.worldbank.org/financing/replenishments/ida18-overview/ida18-regional-subwindow-For-refugees-host-communities>>.

¹²⁴ Preamble, recital 4 (United Nations, Treaty Series, vol. 189, No. 2545). See also A/RES/2312, article 2(2).

¹²⁵ Chimni, B. S. "Global Compact on Refugees: One step forward, two steps back." *International Journal of Refugee Law* 30, no. 4 (2019): 630-634.

¹²⁶ *Ibid*

There is no need for States to pretend that they are cooperating and yet thousands of lives are lost due to such barbaric regimes. In light of this, it is obvious that the Refugee Compact seems does not front the laws objective to protect human rights but it is only used as a mere tool to control migration around the world. This is even with the fact that it encourages States to continue declining to grant asylum. This is no different from the provisions of the current regime and therefore it does not change things from how they are currently. The Compact in this case fails to meet its intended objective on this issue.

This essentially means that the situation in relation to sharing of responsibility remains the same as it was. The sharing of responsibility is dependent on the good will of countries and if a country decides not to assist then nothing can be done in the contrary. The only difference is that in this case there is a call for more concrete measures.

There have been numerous calls by various countries during UN meetings examples include: In 2000, where Bangladesh expressed the need to reach an international consensus on the issue, in 2012, Kenya stated that there was need to expeditiously find other possibilities so as to achieve equal sharing of responsibility mechanisms.¹²⁷ In 2013 Pakistan also expressed the need for new approaches on the issue of burden sharing.¹²⁸ In 2016, Egypt also expressed the same interest.¹²⁹ In addition to these numerous calls by states and a show of willingness to address this issue of burden sharing the 2016, New York Declaration also shows the willingness of member States to engage in division of responsibilities, however it does not provide any concrete commitment by States to provide more places for asylum or more funds to aid countries that suffer from influxes of refugees or asylum seekers.¹³⁰ Various States and these

¹²⁷ UN Doc A/AC.3/67/SR.32 (n 49) para 71 (Mr. Maina, Kenya).

¹²⁸ UN Doc A/AC.96/SR.667 (n 139) para 11 (Mr. Baloch, Pakistan).

¹²⁹ UN Doc A/C.3/70/SR.40 (n 58) para 99 (Mr. Moussa, Egypt).

¹³⁰ In the Declaration, States note that they 'intend' to expand the number and range of legal pathways available to refugees, 'urge' States that do not have resettlement programs to establish them and encourage others to expand them, and will 'consider' expanding complementary admission pathways: *ibid* paras 77, 78, 79. The Declaration

are mostly the industrialized ones would rather provide financial support as compared to resettling asylum seekers within their borders. This is in no way a form of responsibility sharing and it can be seen as a way of trying to compensate for their stringent asylum rules or policies.¹³¹

4.1.5 Enforcement

The Refugee Compact under paragraph 33 states that ‘UNHCR will support the Refugee Compact in speedily achieving its purpose and objectives.’¹³² In realizing the Compact’s objectives .The agency is required annually prepare and deliver a report on what has been achieved in accordance with the provisions of Compact. This is provided for under Paragraph 105 of the Compact.¹³³ This provision will in part help in dealing with the issue of enforcement as an independent will help to ensure that the mandate of the compact is adequately fulfilled.

The UNHCR has been the main agency of the United Nations that is tasked with overseeing all matters that relate to refugees and this has been the case since the enactment of the Convention. The agency has failed to perform its functions efficiently in some cases due to influence by powerful states. The agency is at a part of the problem, and because of the voluntary funding from powerful States it may be constrained to diligently fulfil its mandate.¹³⁴ We should be careful not to associate the Compact’s success with its ability fulfill its four main goals and also to the pointers of development. This is an exercise that might generate data that does not draw the actual picture of the asylum system in the world.¹³⁵ If this is done States may

notes that States ‘aim’ to meet UNHCR's annual resettlement needs through resettlement and other legal pathways (para 78). Similar provisions are reflected in the Comprehensive Refugee Response Framework, paras 14, 15, 16.

¹³¹ Lima, Valesca. "Understanding the Changes in Governance and Participation in Brazil." In *Participatory Citizenship and Crisis in Contemporary Brazil*, pp. 33-66. Palgrave Pivot, Cham, 2020

¹³²The Global Compact on Refugees. Paragraph 33, 2018.

¹³³ The Global Compact on Refugees, Paragraph 105, 2018.

¹³⁴ Chimni, B. S. "Global Compact on Refugees: One step forward, two steps back." *International Journal of Refugee Law* 30, no. 4 (2019): 630-634.

¹³⁵ Ibid

use the annual reports to falsify information on matters in regard to refugees and to validate their harsh policies.

4.1.6 Recommendations on Other Provisions of International Refugee Law

4.1.6.1 Addressing Root Causes

The refugee Compact recommends that the need to include provisions that address the root causes that lead to persons fleeing from their country of origin must be addressed first in order to ensure that the problems that lead to migration are dealt with completely.^{136,137} This is also to ensure that the same problems do not arise again. This is a recommendation that ought to be implemented and that will in the long run help in reducing the number of people that flee from their countries.

4.1.6.2 Critics

The refugee compact in this instance fails to mention that in some cases there are external forces that are the root causes of the problems that lead to person's fleeing.¹³⁸ These external forces may include Western countries that have certain interests in the countries origin.¹³⁹ A good example would be the large outflows in countries like Syria, Afghanistan, Iraq and Libya where countries like USA and Russia have been involved in regime changes. This has led to civil unrest and eventually massive outflows of refugees.

4.1.6.3 Support of Countries of Origins

The Compact contains a provision for the need to support the countries of origin so as to ensure that they to return to their former self. This according to the Compact will help ease the process of repatriation as some refugees may not want to permanently live in the country

¹³⁶ Ibid

¹³⁷ The Global Compact on Refugees. Paragraph 8, 2018.

¹³⁸ <http://www.academic.oup.com>

¹³⁹ Chimni, B. S. "Global Compact on Refugees: One step forward, two steps back." *International Journal of Refugee Law* 30, no. 4 (2019): 630-634.

where they sought asylum but they may want to return home once things have settled down. The Compact advocates for support from other nations to bring back the safety and dignity of such countries. This is a key amendment as it also speaks to the issue of burden sharing which is central to this issue.

4.1.6.4 Critics

There is a down side to this recommendation. Such actions may mean that some persons will miss out on the chance of having a better life. If their States are restored to safety then potential host states may decline to grant asylum merely based on this. This may be due to the fact he or she may want to settle in the destination of choice so as to have a better life, job or even education. There is also the risk of involuntary repatriation as host states may end up forcing asylum seekers to go back to home regardless of whether or not they want to go back.

4.1.6.5 Refugee Women and Children

The Refugee Compact speaks to the issue of the above group of persons who may find end up on the wrong side of the law whether in their home countries or the countries where they sought protection. The agreement purports to protect this special group by advocating for non-custodial alternatives especially for children.¹⁴⁰ This provision is a game changer as previously there was no clear provisions on special groups such as women and children.

4.1.6.6 Critics

There is no provision however, on what this non-custodial methods entail and this may lead to misinterpretation by various parties in order to suit their interests. There no specific measures that protect women during the period of displacement under the agreement yet

¹⁴⁰ Chimni, B. S. "Global Compact on Refugees: One step forward, two steps back." *International Journal of Refugee Law* 30, no. 4 (2019): 630-634.

women and children suffer the most vulnerability when it comes to challenges of seeking asylum.

4.1.6.7 The importance of having regional and sub-regional approaches

The Global Compact on refugees under paragraph 28 speaks to the importance of using these type of approaches in addressing various issues on refugees. Such a provision cannot be found under the Convention on the status or protocol therefore. The Refugee compact even acknowledges that it would be more effective for regions and sub-regions to deal with the issues of refugees.

4.1.6.8 Critics

This is just about all that the Compact discusses on regions and sub-regions forgetting that every region has its own unique problem and therefore there is need to delve a bit deeper on this matter.¹⁴¹

The section fails to identify that regions have are different and so are the problems that these regions face. The reaction of particular regions to the problem of refugees varies from one region to another. The Compact should have had separate sections that identify the problems that different regions face. Case in point is regions such as North America and the European Union where refugees are forced into other regional spaces. There is also the case of Asia where very few countries are signatories to the 1951 Convention. How then do we address such a region? Does it mean that the region should be allowed to violate what international law dictates because they have not ratified the Convention? The Compact should have had a paragraph on special regions such as North America, European Union and even Asia.

In order to remedy the problem of having persons who genuinely deserve to be granted asylum being locked out, the only solution according to Erika Feller, the Assistant High

¹⁴¹ <http://www.academic.oup.com>

Commissioner (Protection), UHCR in her presentation during a workshop on 2nd May 2011 would be to ignore the limited description of a refugee.¹⁴²We should embrace more modern approaches and take into consideration new occurrences in the global scene.¹⁴³She says that involving the State and the international fraternity on where the refugees originate from would help remedy the shortcomings of refugee law. There is need to address each and every factor as by addressing the entire spectrum (that is involving all the stakeholders involved and identifying issues before flight, during flight and after flight) then we will be able to tackle the problems.¹⁴⁴

Erika Feller in her presentation states that the Convention on the Protection of Refugees acts more as a Statute that provides for what is to be achieved in the future instead of guiding us on what needs to be done here and now.¹⁴⁵It has certainly failed to manage the refugee problem. The need to implement other tools that will help in bridging the pitfalls of this Convention is obvious.

George Okoth Obbo the Assistant Secretary General of the UN observes that is indeed there is a need to build a bridge that will assist in giving clear provisions on RSD and the provisions of the Convention.¹⁴⁶ This will assist in ensuring that it is not only those who are covered under the Convention that are protected but that each and every person that requires protection or that requires a place to seek asylum is able to access it. This will ensure that no human rights are violated merely because the Convention narrowly describes who a refugee is.

Any effort by the international community to take on issues such as those that affect refugees resulting in any form of consensus is a major achievement. This is what the Refugee

¹⁴² <http://www.unhcr.org>

¹⁴³ Ibid

¹⁴⁴ Feller, Erika. "The Refugee Convention at 60: still fit for its purpose." In *Statement delivered at Workshop, Refugees and the Refugee Convention*, vol. 60. 2014.

¹⁴⁵ Feller, Erika. "The Refugee Convention at 60: still fit for its purpose." In *Statement delivered at Workshop, Refugees and the Refugee Convention*, vol. 60. 2014.

¹⁴⁶ <http://www.un.org>

Compact is. The Compact is considered such an achievement as it will assist in the promotion of cooperation among States. This will greatly help in handling the current refugee problem. However, there is still room for improvement when it comes to matters that pertain to the following; the main cause of the upsurge in the number of persons who have been forcefully displaced; the overlooking of key provisions under the law; issues that pertain to the protection of children and women; the issue of responsibility sharing; the issues of specific deliverables and finally assigning of the (UNHCR) the duty to oversee issues of refugees, a task that the agency is not prepared to perform.

4.2 Conclusion

In conclusion, despite the international community making numerous efforts to tackle the refugee problem that the world is currently experiencing the lack of political will to share responsibilities remains very evident even in proposed agreements such as the Global refugee Compact. It is still clear that some states are not willing to help equally shoulder the burden and many of the developed States prefer to give financial support other than agree to help host a number of refugees so as to help host countries that have huge numbers of refugees. The Global Compact is a sign that we are making great head way. However, we still need to amend it so as to ensure that it meets its intended purpose.

The solution to these problems of refugee law is not to replace this law but to come up with legal frameworks that supplement its shortcomings and to also avoid tackling issues solely based on the constricted confines of the system of protection that was inherited from previous years. There is need to broaden our approach when it comes to matters that relate to the refugee problem.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

Finally this chapter will give briefly conclude the discussions and findings that emanate from this research in relation to the research's objectives, which was to identify what the correlation between the current international regime on refugees and the international refugee crisis that is currently being experienced across the world.

It will then proceed to give a brief conclusion of the findings after which the researcher will give recommendations on the best way to deal with the shortcomings of international law on refugees, so as to best remedy the current refugee crisis and avoid such occurrences in the future.

5.1 International Legal and Institutional Frameworks

A look at chapter 1 of this research study will show that the number of people that are fleeing their home countries in the 21st century, is on the rise by the day and this is occasioned by various reasons and not only fear of persecution. The fear to face persecution was previously the main reason why many people feared for their lives. This has since changed and currently there is more than one reason why people are fleeing their countries in the hope of finding refuge in other potential countries. Some of these reasons as stated in chapter 1 include war, climatic changes and economic challenges and even the desire to have a better life. These are just but a few reasons why the number of refugees in the 21st century has drastically gone up compared to previous centuries.

Chapter 2 clearly shows that frameworks are have been put in place to ensure the protection of refugees all around the world. Some of these include the law on refugees, human rights and the law of war. These legal frameworks strive to make sure that the refugee rights or

the rights of persons who are seeking asylum in other countries in one way or another are upheld. International refugee law comprises of two main legal frameworks which include, the 1951 Convention and its 1967, Protocol. These two frameworks are what guide States or the international community on the rights owed to refugees all around the world. There is also International Human Rights law which provides protection to refugees as they are human beings and it is a norm that we all have a right to protection from violation our human rights. This is regardless of whether they currently reside in a particular country or they are seeking asylum. There is also Humanitarian Law which ensures that refugees who end up in countries where there is war or war has since erupted are protected from any harm that is occasioned due to these wars.

There are also institutional frameworks such as the UNHCR whose main responsibility is to ensure the safety of migrants or refugees all around the globe. The presence of both legal and institutional frameworks is a clear indication that indeed the importance of protecting refugees by preventing disasters such as those we are currently experiencing is at the top of some of the main objectives we intend to achieve, why then are refugees still suffering? And why some countries having to solely bear the brunt of this disaster?

5.2 Reasons Why International Law Has Failed

Chapter 3 of this research identifies and discusses whether international law is adequate enough to handle the current crisis. The chapter discusses the following;

5.2.1 The Lack of Clear Provisions on the Concept of ‘Burden Sharing’

The law protecting refugees in all its legal frameworks, that is those that were adopted previously and those adopted recently fails to clearly articulate on how states bear the responsibility of taking care of refugees or asylum seekers. The frameworks fail to clearly provide that it is the responsibility of states to help other states that are overwhelmed by the

number refugees that seek to be hosted within their borders. The laws also do not provide how this responsibility is to be shared equally and the effect of this is large numbers of refugees in countries that neighbor those with large numbers of persons fleeing. This has detrimental effects on both the country as its resources are stretched and in most cases not adequate to cater for the large populations. It also negatively impacts the refugees as they end up living in very deplorable conditions yet they sought asylum so as to live in more favorable conditions or for their safety.

The frameworks do not also provide any guidelines on the repatriation of refugees or guidelines on where a refugee should claim protection. Is it in the first country that he or she enters or is it in the destination country? The law also fails to provide that countries that feel overwhelmed are entitled to support from other countries as the responsibility to protect refugees is universal. The research concludes that is one of the main reasons why we are currently facing the refugee crisis.

5.2.2 Narrowness of the Law's Provisions

Chapter 3 identifies that although there have been several attempts by countries and various regions such as Africa and Europe to mitigate this problem there are challenges that we still face owing to this shortcoming.

The law fails to give a collective definition of who a refugee is and limits it to a person who runs away from his country of nationality due to the fear of torture. This has led to many deserving persons missing the chance of being resettled in potential states as they do not fit into this definition. The law also fails to give clear provisions on determination of granting of the status of a refugee and thus leaves it for states to determine. This means that many deserving candidates may end up missing out on the opportunity of being resettled. The provisions of international refugee law also fails to ensure that states offer protection to persons who seek

asylum on grounds other than those of persecution. There is also no provision on enforcement when a State violates its provisions. If there are no repercussions to violating international refugee law then why do we expect states that are selfish in nature to comply with its provisions? With such loopholes it is clear that it is very difficult for international refugee law to adequately meet its responsibilities with the changing dynamics in the world. What amendments do we need to make in order to ensure that its purpose is fulfilled?

5.3 Solutions to Remedy Failure

Chapter 4 assess several recommendations made by various scholars on how to remedy the framework's failures and their critiques. The chapter identifies that although the law is currently not adequate enough to combat the current refugee problems it has been able to achieve its traditional purpose and therefore the solution is not to entirely do away with it but to beef it up a little bit more through amendments.

Some of these amendments include, trying to ease the pressure that is exerted on host countries by providing asylum for some of their refugees or even providing financial assistance as in most cases these countries are strained in terms of resources. Identifying the root causes that have led to the mass exodus of persons and finding ways on how to deal with these. Supporting countries of origination in order to ensure that they are back on their feet so as to prevent flight of persons. Advocating for non-custodial methods in order to protect women and children who are refugees. Addressing the issue of responsibility sharing so as to ensure that it is borne equally. Using regional and sub-regional approaches to tackle this issue of refugees. Enhancing the mandate of the UNHCR in order to facilitate better operation in dealing with the crisis. Undertaking academic research so as to help find answers to the crisis. These are some of the main recommendations that have been given by scholars in order to help in mitigating the pitfalls of international refugee law.

There are however critics on the same as seen in chapter 4 which include, the failure to make it mandatory for states to provide a helping hand not only through financing, failure to observe that root causes are not internal but may also be due to external factors, failure to provide adequate provisions on the issue of non-custodial methods or even to provide on the protection of women, failure to make the concept of responsibility sharing mandatory and leaving it open for states to decide whether or not to participate, failure to consider the unique dynamics of different regions, failure to consider the impartiality of the UNHCR as it depends on the goodwill of states for funding, failure to consider scholarly work of other countries apart from the Western countries.

5.4 Conclusion

In conclusion, it is obvious that there has been some head way made when it comes to matters that deal with protecting refugees. The Comprehensive Refugee Compact, 2018 is evidence that the community is alive to the fact that refugees need to be protected and it is upon all States to ensure that this is made possible through shared responsibility.

There is however, a need to amend the Compact to address the various issues that have been identified by scholars in order to ensure that its objectives are fully met. I am not sure how possible it is to have States implement a law that is perfectly tailored for the needs of refugees. This is because States have a self-help nature which dictates that a State will cooperate with other States if it has something to gain from the cooperation. Agreeing to host refugees according to the developing States does not bring in any form of return, but it only means that they have to use their resources to provide for the refugees and the same people seeking asylum in many cases are the perpetrators of security breaches. This contributes to the unequal shared responsibility that leads to many developing countries having to bear the most weight of the refugee problem.

5.5 Recommendations

The following are the researcher's recommendations on how to remedy the Refugee Compact which is the most recent framework in the protection of refugees;

To create a world system where there is equal representation when making key decisions. The current system is hegemonic meaning that there are states that have more power over others and thus they control the affairs of the world. This means that things are done according to how these States want them done. It is high time that we have equal representation of States in order to ensure that all interests are taken into consideration. This may begin with ensuring that regions such as Africa and Asia are represented in influential organs of the UN such as the UNSC. The Council's main duty is ensuring that there is peace and security across all countries. It is charged with mandate to make very fundamental decisions.

There is also a need to tackle the issue of enforcement as this is also a factor that gravely affects the effectiveness of the laws currently in place for the protection of refugees. A legal instrument that outlines the consequences of failing to comply with international provisions, be of great help in ensuring that these laws work efficiently and that all states participate in ensuring resolution of the refugee problem.

The saying together we stand divided we fall is one that carries a lot of weight especially when dealing with matters such as the one before hand. A united front by various regions such as Africa will come in handy in handling matters of refugees and how this 'burden' should be shared. During the research study it has been identified that the developing states are the ones that shoulder the heaviest burden this can be changed if these countries or regions unite to lobby for equal sharing of responsibilities.

The final recommendation would be to ensure uniformity among States when it comes to issues of protecting refugees. There are regions such as Asia which have not ascribed to the

law that protects refugees and so they end up violating the rights owed to refugees in those regions. Our amendments should be comprehensive enough so as to ensure that no region is left out. All regions in the world should ratify the newly amended laws so as to prevent the recurrence of such violations.

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