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Master of Laws Degree**

Submitted By:

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**Voluntary Repatriation of Urban Somali Refugees from Kenya: A Case for Inclusion in the
Decision Making Process**

DECLARATIONS

I, declare that this thesis is my original work and has not been presented before for a degree in this or any other university.

Veronicah Wakarima

Date

This thesis has been submitted for examination with my approval as university supervisor.

Prof. Edwin Abuya
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Date

DEDICATION

This thesis is dedicated to my nieces and nephews – Natasha, Kevin, Rose, Jamar and Ivanka.

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ABSTRACT

Voluntary repatriation is enshrined in the international human rights instruments as the right to return to one's own country. This implies that any person – including refugees – must be able to exercise the right. Under international refugee law, voluntary repatriation is provided as protection against refoulment by the host state. My thesis argues that in order for the urban Somali refugees to make an informed choice on whether or not to repatriate they must be involved in the decision making process.

As of now, the key stakeholders in the decision making process to voluntarily repatriate Somali refugees from Kenya are the United Nations High Commissioner for Refugees (UNHCR), the Government of Kenya (GOK) and the Federal Government of Somalia (FGS). Somali refugees have been excluded in the decision making process. This therefore implies that the refugee has no choice but to repatriate.

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LIST OF ABBREVIATIONS

AMISOM- African Mission in Somalia

COA- Country of Asylum

COO- Country of Origin

EXCOM- Executive Committee Conclusions

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic Social and Cultural Rights

IDP- Internally Displaced Persons

IOM- International Organization for Migration

FGS- Federal Government of Somalia

GOK- Government of Kenya

NGO- Non Governmental Organizations

OAU- Organization of African Unity

UDHR- Universal Declaration on Human Rights

UN CRC- UN Convention on the Rights of the Child

UNHCR- United Nations High Commissioner for Refugees

CHAPTER 1

INTRODUCTION: GENERAL OVERVIEW AND OUTLINE

How can you ask refugees who have lost their parents or those who have been born here [Kenya] or those who came when they were children to repatriate? Where do you expect them to return to? They haven't been to Somalia nearly the whole of their lives. The voluntary repatriation is not voluntary. It has to come from me. I must want to go back but not to be forced. By the way, Kenyan authorities should not discriminate us. Somalis have businesses and we are working hard. We are contributing to the income of the country.¹

1.1 Somali Refugees in Kenya

Anab's comment highlights the complexity of decision making by refugees in the repatriation process. The presence of Somali refugees in Kenya can be traced back to 1991 following the collapse of Siad Barre regime.²The collapse of Somalia was the consequence of a combination of internal and external factors.³These saw the seceding of Somaliland (May 1991) from the rest of Somalia and the formation of Puntland Federal State of Somalia (August 1998). Sofia and others, claim that the causes of civil war in Africa can be linked to various issues: greed, grievances, financial and military feasibility of rebellion, low levels of trust among the population, a strong

¹Interview with Anab in Westlands, Nairobi County (29/12/2015).

² Ioan Lewis, *Understanding Somalia and Somaliland: Culture, History, Society* (Hurst Publishers Ltd 2008) at preface.

³ Accord 21, *Endless War: A brief History of the Somali Conflict* in Mark Bradbury and Sally Healy (eds), *Whose peace is it anyway? Connecting Somalia and international peacemaking* (Conciliation Resources 2010) 10-14 notes that, externally there was the 1977-78 Ogaden war with Ethiopia (The Ogaden War was a conventional conflict between Somalia and Ethiopia in 1977 and 1978 over the Ogaden region of Ethiopia). Fighting erupted as Somalia sought to exploit a temporary shift in the regional balance of power in their favor to occupy the Ogaden region, claimed to be part of Greater Somalia. Ethiopia had originally dominated the region. Internally there was a degree of disintegrations between the central authority and the fractious kinship system; the single rule by Siad Barre on one hand, and the various clans fighting for control of leadership and resources on the other hand. An unsuccessful attempted coup was mounted against the regime in 1978. Those who escaped arrest after coup regrouped forming a guerrilla opposition group (Somali Salvation Democratic Front) which had its operation base in Ethiopia. Also, Supra note 2 at 64-67, observes that, armed opposition to Siad spread and assumed a national character transcending the already existing clan divisions. Thus it can be said that generally no single factor can explain the causes of the conflict as the nature of the crisis keeps mutating.

sense of ethnic identity and absence of strong democratic institutions.⁴ The growing prevalence of refugees in Africa arise out of the many violent ethnic and civil conflicts occurring in the continent.⁵ For example, between 1960 and 2000, approximately 20 African countries experienced at least one period of civil war.⁶ Many other conflicts in Africa are an outcome of political marginalization of the minority group by the majority.⁷

The Dadaab refugee camp was founded by the Kenyan government in 1991 in response to the influx of Somali refugees into the country.⁸ A significant number of Somali refugees have lived in Kenya for more than two decades. In 2012, Somalia held an elaborate electoral process. This saw the election of President Hassan Sheikh Mohamud and the creation of the Federal Government of Somalia (FGS). It also contributed to Somalia witnessing relative stability and security. Not surprising perhaps, Somalis from Diaspora were reported to have gone back to Somalia to develop their country.⁹

As of April 2016, Kenya hosted 597, 683 refugees and asylum seekers. Of these, an estimated 70% are registered Somali refugees.¹⁰ Majority of the refugees are at Dadaab refugee camp, located in

⁴Sofia du Plessis and others, 'Democratisation in Africa: The role of self-enforcing constitutional rules'[2015] 15(1) African Journal on Conflict Resolution 10.

⁵Ibid.

⁶Ibid.

⁷Ibid

⁸UNHCR, 'Dadaab- World's biggest refugee camp 20 years old', available at <http://www.unhcr.org/4f439dbb9.html> (21 Feb 2012) accessed 03/03/2016.

⁹ Marianne Alfsen, 'Rebuilding Somalia, A window of Opportunity', Perspective: A humanitarian and international affairs magazine (3/2012) at 10.

¹⁰ Available at the Regional mixed migration secretariat website (RMMS) at <http://www.regionalmms.org/fileadmin/content/monthly%20summaries/RMMSMonthlySummaryMarch%202016.pdf> (15 March 2016), accessed on 16/04/2016. Also; see UNHCR website at <http://data.unhcr.org/horn-of-africa/country.php?id=110> accessed 16/04/2016.

the North Eastern part of Kenya, close to the Kenya-Somalia border. Several others are found at Kakuma refugee camp on the Kenya-South Sudan border. Although refugees in Kenya are required to reside in camps¹¹, approximately 10% of the refugees live in urban areas within Nairobi.¹² Of these, 50%¹³ are registered Somali refugees. This challenges UNHCR's assumption that 'almost half of the world's refugees now reside in cities and towns, compared to one third who live in camps.'¹⁴This study will focus on urban Somali refugees in Eastleigh, Nairobi. UNHCR has allowed a minority number of refugees to live outside Kakuma and Dadaab camps. Often on the grounds of; higher education considerations, specialized medical treatment, refugees in the resettlement process or those with security concerns in the camps.¹⁵

1.1.1 Definitions of a refugee, a returnee and repatriation

The 1951 Convention Relating to the Status of Refugees is the main legal instrument for the protection of refugees and defines a refugee as, ' a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or,

¹¹ Edwin Abuya, *From Here to Where? Refugees living in protracted situations in Africa* in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens* (Cambridge University Press 2010) 134. See, Article 25 of the Refugee Act of Kenya (2006).

¹² Available at the Regional mixed migration secretariat website (RMMS) at <http://www.regionalmms.org/fileadmin/content/monthly%20summaries/RMMSMonthlySummaryMarch%202016.pdf> (15 March 2016) accessed on 16/04/2016.

¹³ UNHCR, at <http://data.unhcr.org/horn-of-africa/country.php?id=110> (29 Feb 2016) accessed 16/04/2016.

¹⁴ UNHCR, available at <http://www.unhcr.org/pages/4b0e4cba6.html> accessed on 16/04/2016. The UNHCR Policy on Refugee Protection and Solutions in Urban Areas recognizes that there is a growing number and proportion of refugees found in urban areas.

¹⁵Supra note 11 at 135.

owing to such fear, is unwilling to return to it.’¹⁶The 1969 Organization of Africa Union Convention governing the specific aspects of refugee problems in Africa provides an additional definition of a refugee as, ‘every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.’¹⁷For the purposes of this study the term ‘refugee’ is used to refer to individuals who meet the criteria set out under the 1951 Refugee Convention , its 1967 Protocol¹⁸, the 1969 OAU Convention and the Refugees Act of Kenya 2006.¹⁹‘Returnee’ is used to refer to individuals who have returned to their country or origin.

There is no formal or legal definition of the term repatriation as it does not appear in any legally binding instrument. In general terms, to repatriate is to send or bring back somebody to their own country of origin.²⁰ Within the international human rights instruments, repatriation has been described as the right to return to one’s own country.²¹ This is relevant as it provides a human rights basis for requiring states to re-admit and protect their citizens. ‘Repatriation’ and ‘return’ will be used interchangeably to mean the same thing in this study.

¹⁶ Article 1(A) of the United Nations Convention Relating to the Status of Refugees, adopted on 28 July 1951, 189 U.N.T.S. 137 (entry into force 22 April 1954) (hereinafter 1951 Refugee Convention).

¹⁷ Article 2 of the OAU Convention Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugees Problems in Africa 1969, adopted by the Assembly of Heads of States and Government at its Sixth Ordinary Session, Addis Ababa, 10 September 1969 1001 UNTS 45; entry into force 20 June 1974 (1969 OAU Convention).

¹⁸Protocol Relating to the Status of Refugees; entry into force 4 October 1967 (1967 Protocol).

¹⁹Article 3 of the Refugees Act 2006.

²⁰ Oxford Advanced Learner’s Dictionary; available at <http://www.oxfordlearnersdictionaries.com/definition/english/repatriation> accessed on 10/10/2015.

²¹Article 13 (2) of the Universal Declaration of Human Rights 1948 (GA res 217A (III),10 December 1948); Article 12(4), International Covenant on Civil and Political Rights 1966 (GA res.2200A (XXI), 16 December 1966, 999 UNTS 171; entry into force 23 March 1976 (ICCPR).

1.1.2 Social and economic organization of Somali refugees

Unlike in the refugee camps there is no formal settlement for refugees in urban centres. Majority of Somali refugees are found in Eastleigh. Refugees move to urban centres in search of better opportunities: living conditions, availability of services, economic opportunities and livelihoods.²² Other factors influencing refugees to live in urban areas include; ‘security threats in the camps, lack of education and medical services and harsh climatic conditions.’²³ Refugees who choose to live in urban areas are entitled to minimal support (usually medical and psychosocial support) from UNHCR and therefore must be able to sustain themselves materially and economically.²⁴ They also have to go back to the camp regularly for registration and population counts.²⁵

It is well documented that refugees contribute to the social and economic growth in the host state.²⁶ For example, during my visit to Eastleigh I observed that most shops (clothes), open air markets and restaurants were being run by Somalis. This is also consistent with Anab’s comment at introduction. It thus follows that, when Somali refugees come to Eastleigh, they usually find employment as casual workers in hotels and shops.²⁷ The refugees in turn provide financial support to the families back in the camps.²⁸ Consequently, interrelations exist between refugees in the

²² Refugee Consortium of Kenya, *Asylum Under Threat: Assessing the protection of Somali Refugees in Dadaab refugee camps and along the migration corridor* (Pann Printers Limited 2012) 76-77.

²³ Sara Pavanello and others, *Hidden and exposed: Urban refugees in Nairobi, Kenya* (Humanitarian Policy Group 2010) at 14.

²⁴ Idil Lambo, *In the Shelter of each other: notions of home and belonging amongst Somali refugees in Nairobi* (UNHCR 2012) at 5. Also, *Ibid* at 13.

²⁵ *Ibid* at 5.

²⁶ *Supra* note 11 at 149-153. Also, Eve Lester, Socio-economic rights, human security and survival migrants: Whose rights? Whose security?. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 323.

²⁷ *Supra* 22 at 21. Also, under the Refugee Act 2006, it is difficult for a refugee to have a work permit which would enable him/her have meaningful employment in a formal job market. The Kenyan Labour laws do not allow refugees in the camps to earn salaries. They instead receive allowances from UN agencies and humanitarian organizations.

²⁸ *Supra* 22 at 23.

camps and those living in Eastleigh. Furthermore, a significant number of refugees receive remittances from their relatives abroad.²⁹ The remittance can be on a regular or ad hoc basis.

In Kenya as in other developing countries in Africa, refugees are seen by the nationals as ‘threatening the local economy and creating social pressures’.³⁰ Consequently, there has been very minimal effort to boost their potential and empowerment to the national economies.³¹ In Eastleigh, Somali refugees are seen by Kenyan businessmen as competitors.³² Moreover, social stability in Kenya has been undermined by the ‘rise of xenophobic attitude’³³ and hostility towards Somalis by Kenyans.³⁴

In terms of social organization, Somalis living in Eastleigh have maintained their identity in terms of religion (Islam), language (Somali) and dressing among women. Their sense of identity can be attributed to the closely community network that exists among the Somalis.³⁵ These strong community networks act as safety nets particularly, when they face police harassment. For instance, ‘if a refugee and especially a woman is stopped in the street, community members passing by immediately start to collect (bribe) money in an attempt to prevent detention.’³⁶ Despite living

²⁹Supra 22 at 22.

³⁰Oliver Bakewell, 'Returning Refugees or Migrating Villagers? Voluntary Repatriation Programmes in Africa Reconsidered' [2002] 21(1 & 2) Refugee Survey Quarterly 44.

³¹Supra note 11 at 151. Also, supra note 23 at 23.

³²Supra note 23 at 27.

³³Supra note 21 at 327.

³⁴Supra 23 at 7.

³⁵Supra note 2 at 49 observes that, “The most pervasive organizational principle in the traditional Somali social organization is kinship, traced patrilineally in the male line...these ties continued to provide the individual’s primary identity within the Somali nation.”

³⁶Supra note 18 at page 19.

far away from home, most Somali refugees identify themselves as Somalis as opposed to being Kenyans.³⁷

1.1.3 Somali refugees a security threat in Kenya

According to Lubbers, ‘since the September 11, 2001 (9/11) attack on the United States...the global attitude towards refugees and asylum seekers’ changed for the worse.³⁸ At the international level for instance, the UN Security Council Resolution 1373³⁹ requires all member states to establish effective border controls and regulate the issuance of identity papers and travel documents.⁴⁰ In addition, make sure that refugee status is not abused by those involved in terrorism.⁴¹ The anti-terrorist measures have contributed to an unwarranted link between the words ‘refugees’ and ‘terrorists’⁴², and the advent of ‘increasingly restrictive borders control measures’⁴³ against refugees. In 2013, for example, following the Westgate mall attack by the Al Shabaab in Nairobi, Kenya⁴⁴, senior government officials spoke out strongly against allowing more refugees into the country while advocating for the return of Somali refugees back to their country.⁴⁵ As a

³⁷ Supra note 24 at 7-12. Also, Michael van Notten, *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa* (The Red Sea Press, Inc 2005) 30 observes that “most Somalis are imbued with a healthy dose of self-esteem”.

³⁸ Ruud Lubbers, 'Asylum for All: Refugee Protection in the 21st Century' [2002] 24(1) Harvard International Review 1.

³⁹ UN SC Resolution 1373, 28 Sept. 2001, UN Doc. S/RES/1373 (2001). This was reinforced by the UN SC Resolution 1624, 14 Sept. 2005, UN Doc. S/RES/1624 (2005).

⁴⁰ Ibid, para. 2(g)

⁴¹ Ibid, para. 3 (g).

⁴² Daniel Moeckli, Immigration law enforcement after 9/11 and human rights. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 470.

⁴³ Supra note 26 at 323.

⁴⁴ John Ngirachu and others, ‘Security forces move to end Westgate mall siege as death toll rises to 62’ available at <http://www.nation.co.ke/news/Westgate-Mall-attack-alshabaab-terrorism/-/1056/2004630/-/kr74w0/-/index.html> (23 September 2013) accessed on 13/09/2015.

⁴⁵ Michael Pizzi, 'Kenya call for Somali's to leave world largest refugee camp' (<http://america.aljazeera.com> 2013) <
<http://america.aljazeera.com/articles/2013/10/25/kenya-calls-for-emptyingofworldlargestrefugeecamp.html>>
accessed on 21/06/2015.

consequence of the outbursts by the senior government officials, some Somali refugees ‘voluntarily returned’ home for fear of stigmatization and discrimination.⁴⁶

The UN Special Rapporteur on the Human Rights of Migrants has noted that, ‘the erosion of rights sometimes caused by anti-terrorist measures affects migrants in particular.’⁴⁷ According to Moeckli, the portrayal of immigrants [refugees] as potential terrorists, in turn, makes restrictions of their fundamental human rights appear acceptable.⁴⁸ In April 2014, for example, following a spate of grenade attacks in Kenya, security search operations were intensified in Eastleigh in an attempt to flush out Al Shabaab operatives. Many Somali refugees were arbitrary detained and harassed by police.⁴⁹ It can be said that the anti-terrorist measures have created unprecedented level of suspicion and hostility against refugees.⁵⁰

As noted earlier, majority of the Somali refugees in Kenya reside at the Dadaab refugee camp mainly due to its proximity to the Somalia border. Abuya notes that, host states confine refugees in camps ‘in order to protect the security of their own state.’⁵¹ Accordingly, host states regularly denounce refugee camps for being a source of insecurity and terrorism.⁵² In Kenya, authorities

⁴⁶ UNHCR, ‘Somali Refugees in Kenya Factsheet 29-01-2014’, available at <http://www.data.unhcr.org/horn-of-africa/download.php?id=1295> accessed on 16/01/2016 at 3.

⁴⁷Report of the Special Rapporteur on the Human Rights of Migrants, 22 September 2004, UN Doc. A/59/377, para.55. In 2013, the Special Rapporteur noted that, “99.99 per cent of irregular migrants posed no security threat...and that the rights of migrants are still on the back burner.”

⁴⁸Supra note 42 at 470-471.

⁴⁹ BBC News, ‘Kenyan Nairobi blasts: Police arrest 627 in Eastleigh’, <http://www.bbc.com/news/world-africa-26838638> (1 April 2014) accessed on 09/09/2015.

⁵⁰Alexander Betts and others, *UNHCR: The Politics and Practice of Refugee Protection Into the 21st Century* (Taylor & Francis Group 2008) 62.

⁵¹Supra note 11 at 133.

⁵²Robert Muggah, Once we were warriors: critical reflections on refugee and IDP militarisation and human security. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 173. Also, supra note 8 at 133.

have repeatedly expressed concerns to UNHCR and the international community over the Dadaab refugee camp. For example, during the London Conference on Somalia in 2012, the then Kenyan President, Mwai Kibaki, said that the overcrowded Dadaab refugee camp posed ‘growing and serious security threats to Kenya and the region.’⁵³ Critics however argue that there is ‘comparatively little evidence of the extent and pervasiveness of refugee militarization in Africa or elsewhere.’⁵⁴ The subject is however outside the scope of this study.

Recently, there has been significant political pressure from the Kenyan Government towards urban refugees. In 2012, for example, following the Presidential elections in Somalia, the Kenyan Government issued a directive that it had stopped registration of urban asylum seekers and refugees, and closed all registration centers.⁵⁵ Following the announcement, UNHCR reported that Somali refugees were spontaneously returning from Dadaab camp to Somalia.⁵⁶ In December 2012, the Department of Refugee Affairs ordered urban refugees living in Nairobi to go back to the camps on grounds of ‘unbearable and uncontrollable threat to national security.’⁵⁷

Generally, Kenyan authorities have on several occasions accused Somali refugees of abusing their hospitality and good will.⁵⁸ For instance, in April 2014, following a spate of grenade attacks in the country; President Uhuru Kenyatta announced that Kenya would not extend its hospitality to

⁵³London Conference on Somalia: Communique (23 February 2012) <http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=727627582#> accessed on 13/09/2015.

⁵⁴Supra note 52 at 173.

⁵⁵ Department of Refugee Affairs, Press Statement, 13/12/2012, on file with the student. Around the same period, the then internal security Permanent Secretary Mutea Iringo said that the government was in talks with UNHCR to repatriate Somalis back home as “normalcy has returned in Somalia”.

⁵⁶UNHCR, ‘Somali Refugees in Kenya Factsheet 29-01-2014’, available at <http://www.data.unhcr.org/horn-of-africa/download.php?id=1295> accessed on 16/04/2016 at 3.

⁵⁷Supra note 50 at 2.

⁵⁸Supra note 52 at 177.

refugees at the expense of insecurity in the country.⁵⁹He said this was because Kenyans had suffered deaths and injuries as a result of terrorist attacks.⁶⁰ Furthermore, the Government of Kenya has been at the fore front urging the international community to return Somalis to their country.⁶¹

Jeremy Bentham opines that, ‘the moral worth of actions is dependent on their effects on the interest of the community, defined as the greatest happiness of the greatest number’.⁶²Viewed from his perspective, the foregoing suggests that, the basis of the decision to repatriate Somali refugees by the GOK was to ensure that benefit or advantage (of security) was conferred to Kenyans at the loss or disadvantage to a select few (refugees) that were seen as posing security risk to Kenyans. Essentially, the Kenyan society had experienced mischief or pain which necessitated the repatriation of Somali refugees. It is anticipated that once Somali refugees go back to their COO, the insecurity in the country will decrease.

1.1.4 Towards voluntary repatriation of Somali refugees in Kenya

A combination of several factors contributed to the need to repatriate Somali refugees from Kenya. These include; national security concerns, donor fatigue and lack of resources to sustain the presence of Somali refugees, the formation of the Federal Government of Somalia and accessibility to new areas previously controlled by the Al Shabaab. In November 2013, UNHCR together with the governments of Kenya and Somalia signed a tripartite agreement for the repatriation of Somali

⁵⁹Supra note 45.

⁶⁰Ibid.

⁶¹Supra note 53.

⁶² Jack Lively and John Rees, *Utilitarian Logic and Politics: James Mill's Essay on Government', Macaulay's critique and ensuing debate* (Oxford Univeristy Press 1978) 39.

refugees.⁶³ Refugees were not involved in the decision making process. UNHCR announced that the repatriation would take place from Kenya to Somalia over a period of four and half years, from July 2015 to December 2019.⁶⁴

1.1.4.1 Tripartite agreement governing the Somali refugee returns

The tripartite agreement will ensure that only voluntary returns of Somali refugees take place from Kenya to Somalia.⁶⁵ With the signing of the tripartite agreement, Kenya re-confirmed its commitment to preserving the protection space of refugees. Voluntary repatriation is codified in Article 1(5) of the tripartite agreement as the ‘voluntary return of a refugee to the country of origin with the specific intention to re-avail him or herself of the national protection of the country of origin.’⁶⁶ The tripartite agreement sets out the fundamental human rights in the repatriation process as follows: right to nationality, life, liberty and security of the person.⁶⁷ While acknowledging that insecurity in the Horn of Africa region as a key concern for both Kenyan and Somali governments, the tripartite agreement recognizes Kenya in shouldering the burden of Somali refugees since 1992.⁶⁸

Article 3 of the tripartite agreement establishes a tripartite commission⁶⁹ composed of the UNHCR, Government of Kenya and Government of Somalia. Conspicuously missing from the commission

⁶³Tripartite Agreement between UNHCR, Government of Kenya and the Government of Somalia; governing the voluntary repatriation of Somali Refugees living in Kenya, 10 November 2013 (Tripartite agreement), (Attached as annex three).

⁶⁴ UNHCR, ‘Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia’ (29/07/2015) at 5.

⁶⁵ Article 2 and Preamble at (j) of the tripartite agreement.

⁶⁶Article 5 of the tripartite agreement.

⁶⁷Articles 9 and 10 of the tripartite agreement and at the Preamble.

⁶⁸Ibid.

⁶⁹ Article 3 of the tripartite agreement. The tripartite commission consists of representatives from host country (Kenya), country of origin (Somalia) and UNHCR.

is the refugee – who will be affected by the decision of the commission. Notwithstanding, the role of the commission is determined to advance the voluntary repatriation of Somali refugees.⁷⁰ In addition, the commission is tasked with establishing modalities and providing guidance and recommendations to the UNHCR, governments of Kenya and Somalia on voluntary repatriation of Somali refugees.⁷¹ The net effect of this provision is to exclude refugees’ participation in matters affecting them, and therefore ruling out their capacity in decision making.

Part II of the tripartite agreement further reinforces the exclusion of Somali refugees from decision making process by detailing the roles and responsibilities of the UNHCR, government of Kenya and government of Somalia⁷² to the debar of the refugee. Nevertheless, the framing of the tripartite agreement suggests that Somali refugees have a role to play in the voluntary return by virtue of article 9 (the right of return). The preamble of tripartite agreement recognizes that the ‘attainment of this solution (voluntary repatriation) requires that refugees will voluntarily return to their country of origin’.⁷³ In other words, refugees must consent to voluntarily return. Recourse to the attainment of return that is truly voluntary lies not only signing agreements but in recognizing refugees as an equal party – with a role to play – in the repatriation process. ‘Return that is truly voluntary is most likely to result in sustainable return in safety and dignity’⁷⁴ for refugees.

Spontaneous repatriation is also the object of article 16 of the tripartite agreement. Notably, the tripartite agreement is silent on the status of refugees who decide that they do not wish to return.

⁷⁰Article 5(1) of the tripartite agreement.

⁷¹Article 5 (2) of the tripartite agreement.

⁷²Articles 24-26 of the tripartite agreement.

⁷³Preamble at (d), tripartite agreement.

⁷⁴Supra note 26 at 324.

The implication of this is that, such refugees may be pressured to repatriate as the option to remain is not made available to them.⁷⁵ Or worse, ‘risk remaining in limbo’⁷⁶ or ‘being denied protection under the provisions of international refugee and human rights law.’⁷⁷ For instance, in 2008, the Ghanaian government asked all Liberian refugees to go back to Liberia after communicating that it intended to shut down the refugees’ settlements.⁷⁸

In addition, the tripartite agreement contains a provision explicitly targeting the needs of the ‘vulnerable groups’. Article 18 (1) provides that special measures will be adopted to guarantee the protection of vulnerable groups, children, the elderly and women.⁷⁹ Nevertheless, there is no specific mention of pregnant women, disabled persons, the blind and the deaf. The tripartite is silent on what measures will be taken to ensure their protection during repatriation and how their special needs will be met.

The tripartite agreement says very little on inclusion of refugees in decision making. Article 4(5) provides that the tripartite commission “may whenever appropriate invite refugee representatives in its deliberations in an observer or advisory capacity”.⁸⁰ This is not sufficient. The most direct way of ensuring that refugees are involved in decision making, would be for UNHCR, Kenya and

⁷⁵A refugee can opt to remain but must show evidence that they risk facing persecution/threats to their life if returned to their country of origin.

⁷⁶Supra note 11 at 161.

⁷⁷Ibid.

⁷⁸ Naohiko Omata, 'The Complexity of Refugees' Return Decision-Making in a Protracted Exile: Beyond the Home-Coming Model and Durable Solutions' [2013] 39(8) Journal of Ethnic and Migration Studies 1284.

⁷⁹ Article 18 of the tripartite agreement.

⁸⁰ Article 4(5) of the tripartite agreement.

Somali governments to include them (refugees) as members of the tripartite commission at the planning stage.

The tripartite agreement is conspicuously silent on breach, non-performance or non-compliance by the signatories. It fails to provide for the consequences of breaching or neglecting to fulfill the provisions contained therein. Article 28 of the tripartite provides that, any disagreement originating from the application and interpretation of the agreement will be settled through consultations and negotiations among the signatories.⁸¹ Failure to provide for consequences of breach means that, the signatories may opt not to honor the provisions of the agreement. This suggests that the tripartite agreement lacks an enforcement mechanism.

Critics have argued that, tripartite agreements are often slow and do not reflect refugees' criteria for deciding to go home.⁸² In response to a question whether refugees (both camp and urban) were consulted during the drafting of the tripartite agreement, John said:

The drafting of the tripartite agreement is a states' process and refugees were not involved. The GOK and FGS were representing the views of their citizens. UNHCR was representing the refugees. It was a political process. In international politics you deal with states not individuals.⁸³

What carried the day in the drafting and signing of the tripartite agreement was the benefit or advantage that would fetch the greatest happiness of the greatest majority of the Kenyan citizens.⁸⁴

This was confirmed by interviews with NGO and UNHCR staffs who mentioned that the views of

⁸¹Article 28 of the tripartite agreement.

⁸² Barry Stein and Frederick Cuny, 'Refugee Repatriation during Conflict: Protection and Post-Return Assistance' [1994] 4(3) *Development in Practice* 177.

⁸³Interview with John in Lavington, Nairobi County (09/09/2016).

⁸⁴Supra note 62 at 39.

refugees were not well articulated in the tripartite agreement. The critical question is at what point do you involve refugees? At what stage is the voice of the refugee supposed to be heard? My thesis will seek to answer these questions.

1.2 Statement of the problem

Urban Somali refugees have been excluded in the decision making process to repatriate. Non-inclusion of urban Somali refugees contravenes their right of access to information under national⁸⁵ and international law.⁸⁶ The right of participation⁸⁷ goes hand in hand with right of access to information. Thus, a mischief is occasioned by lack of access to information, which enables refugees make an informed decision. Courts in Kenya have reiterated the public interest, when dealing with non-inclusion of the public in matters affecting them.⁸⁸ International law recognizes the participation of people (including refugees) in public affairs.

Failure to involve urban Somali refugees in the repatriation process will result to the infringement of their civil-political rights. Specifically, the right to participate and influence decisions in matters affecting them. Exclusion of urban Somali refugees is also likely to create statelessness for some refugees – those born in Kenya, as their views will not be heard.

1.3 Research objectives

⁸⁵Article 35 (2) and (3) of the Constitution of Kenya.

⁸⁶Article 9 of the African Charter on Human and Peoples Right (ACHPRs), article 19 (2) of the ICCPR and article 15 (1) of the tripartite agreement.

⁸⁷Article 25 of the ICCPR. Also, article 13 of the African Charter on Human and Peoples Right (ACHPRs).

⁸⁸See, for example, *Peter Bogonko versus National Environmental Management Authority (NEMA) Miscellaneous Application No 1535 of 2005 eKLR*.

- i. To establish the extent to which inclusion of urban Somali refugees in the decision making process will lead to their informed choice of whether or not to repatriate.
- ii. To identify ways in which urban Somali refugees can participate in the decision making process on voluntary repatriation.

1.4 Research questions

- i. Will the inclusion of urban Somali refugees in the repatriation process lead to their informed decision to return?
- ii. How can urban Somali refugees be involved in the decision making process to repatriate?

1.5 Hypothesis

When urban Somali refugees are involved in the repatriation process, they will make an informed decision. They will have access to information on repatriation, participate in the go and see visits to their COO and contribute their views on the repatriation process. The current decision making process is limited to UNHCR, GOK and FGS.⁸⁹ The process sidelines refugees who are the principal actors in the repatriation exercise.

1.6 Theoretical framework

Human beings, generally move from one place to another for various reasons. Migration is one of the primary responses to conflict in the world. Unquestionably, threats to, and the search for human

⁸⁹Article 4 of the tripartite agreement.

security, inform a refugee's decision to leave their country of origin to the asylum state.⁹⁰ Needless to say, lack of human security is well recognized as a cause of migration.⁹¹ In a globalized world, migration assumes different forms; forced or voluntary, circular or seasonal, temporarily or permanently motivated.⁹² These differences produce different outcomes observable from a sociological perspective. Refugee migrations are as complex as the situations that create them.⁹³ Scholars have put forward that, 'no single theory can provide a comprehensive explanation for the migration process.'⁹⁴

My thesis will adopt the rational choice theory as propounded by George Homans. According to this theory, 'in choosing between alternative actions, a person will choose that one for which, as perceived by him at the time, the value of the result, multiplied by the probability of getting the result, is the greater.'⁹⁵ Thus, in making the decision of whether or not to repatriate, a refugee does a cost benefit analysis of whether or not to go back home. In the words of George Homans the positive factors of repatriating (for example conditions in the COO) must outweigh those of remaining in the COA. In order for Somali refugees to do the cost benefit analysis of whether to repatriate or not, they must be involved on the repatriation process. In other words, they must have

⁹⁰Supra note 26 at 325.

⁹¹Supra note 26 at 322.

⁹²Ibid at 318.

⁹³John S. Collins, 'An Analysis of the Voluntariness of Refugee Repatriation in Africa' [1996], research thesis at page 17; available at http://www.umanitoba.ca/institutes/disaster_research/refugee_thesis/chapter3.pdf, accessed on 06/04/2016.

⁹⁴M.D.A Freeman, *Llyod's Introduction to Jurisprudence* 8th ed. (Sweet and Maxwell 2008) 835; Douglas S. Massey and others, 'Theories of International Migration: A Review and Appraisal' [1993] 19 (3) 432; Russell King, 'Theories and Typologies of Migration: An Overview and a Primer' [2012] 12 (3) Willy Brandt Series of Working Papers in International Migration and Ethnic Relations at 11.

⁹⁵George Homans, *Foundations of Social Theory* (Cambridge University Press 1961) 27. Also, George Casper Homans and Charles P. Curtis, *An Introduction to Pareto, His Sociology* (New York Publishers 1974) 43.

access to accurate and reliable information about conditions in Somalia and participate in the ‘go and see’ visits to Somalia.

The rational choice theory proposes that people will perform an action depending on their perception of the probability of success.⁹⁶ Thus, a person [refugee] is capable of making a ‘rational choice’ of whether or not to repatriate based on the value of the resulted expected.⁹⁷ Ideally, refugees make a ‘rationally calculated’ decision after ‘due consideration of relevant information’ on the conditions in the COO.⁹⁸ They compare the amount of rewards associated with each course of action and calculate the likelihood that they will receive the rewards.⁹⁹ To him, people who act in accordance with the rational choice theory maximise their utilities.

This theory has four main shortcomings. First, it assumes that everyone has a choice. Not everyone who decides to repatriate, reaches that decision by themselves. For instance, it does not take into account the influence of husbands and wives in the decision making process.¹⁰⁰ Second, it does not define ‘rational’. Third, it does not tell us what is the standard of measuring a ‘rational’ vis-à-vis an ‘irrational’ choice? Human actions involve both rational and irrational acts. What is rational to one person may not be rational to another. Fourth, what is the test used?

⁹⁶Ibid

⁹⁷Ibid. Also, Anthony H. Richmond, ‘Sociological Theories of International Migration: The Case of Refugees’ [1988] 36 (2) Sage Publications 7.

⁹⁸Supra note 95. Also, Russell King, ‘Theories and typologies’ at 14.

⁹⁹Supra note 95

¹⁰⁰Everett S. Lee, ‘A Theory of Migration’, [1966] 3(1) Demography 51.

The rational choice theory assumes that all individuals have a choice and thus, are able to make calculated decisions. Secondly, the theory indicates an aspect of individualism. In that, the decision is made for selfish motives – convenience of the decision maker. Third, the theory assumes that any act committed has consequences: benefit or loss. Thus, in order to augment or diminish the consequences, a ‘rational’ decision must be made. In other words, a person will make a rational decision based on the profit or benefit expected from the action.

1.7 Literature review

The subject of durable solutions for refugees has received a lot of attention as evidenced by the number of scholarly writing and materials both at the international and domestic arena. However, much of the literature focuses on repatriation, resettlement and other related issues such as conditions of repatriation and involuntary returns. Very minimal literature exists on the inclusion of refugees in the decision making process to repatriate. In addition, the legal framework on participation of refugees is limited. This study will aim to fill this gap by putting forward a case for inclusion of urban Somali refugees in the decision making process to repatriate.

1.7.1 Voluntary repatriation and protection of refugees

Voluntary repatriation is one of the three main durable solutions that a refugee is entitled to. Others are local integration into the host state and resettlement to a third country. Since late 1980’s, voluntary repatriation is seen as the ‘most feasible’ of the three solutions.¹⁰¹ Resettlement places are rather limited whereas local integration is an unpopular option in developing countries where

¹⁰¹Katy Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation* (UNHCR 2013) para. 21.

majority of the world's refugees are found.¹⁰² Voluntary repatriation brings refugees back to the protection of their state.¹⁰³

Commenting on the concept of repatriation, Bakewell¹⁰⁴ notes that there is a stereotype by UNHCR that 'people who are forced to leave their home very often want to go back to them'. He observes that the option to repatriate is usually presented to the refugees without examining their views: whether or not they still conceive their country of origin as 'home', whether the circumstances that made them flee still exist or whether they want to return.¹⁰⁵ A similar point of view is shared by Harrell-Bond.¹⁰⁶ She observes that, 'it is common sense to believe that the best place for refugees is home'.¹⁰⁷ The assumption being that no refugee leaves their homeland without the expectation that they will return one day. The foregoing suggests that refugees are weak and vulnerable and hence cannot be able to make decisions. According to George Homans (proponent of rational choice theory), individuals are capable of making rational decisions.¹⁰⁸ Thus, refugees should be seen as strong and capable of making calculated decisions. Bakewell and Harrell-Bond suggest that the solution to this kind of assumption is to find out from the refugees' their motivations to repatriate.¹⁰⁹ In other words, refugees' understanding of repatriation and their responses to the prospect of returning are inextricably linked with their idea of home. Bakewell's study does not investigate the motivations of refugees who want to repatriate permanently or those who do not

¹⁰² Ibid.

¹⁰³ Supra note 27 at 44.

¹⁰⁴ Supra note 27 at 42.

¹⁰⁵ Ibid.

¹⁰⁶ Barbara Harrell-bond, 'Repatriation: Under What Conditions Is It the Most Desirable Solution for Refugees? An Agenda for Research' [1989] 32(1) African Studies Review 42-45. Also, supra note 78 at 1284-1296.

¹⁰⁷ Ibid at 43.

¹⁰⁸ Supra note 95.

¹⁰⁹ Supra note 106 at 48; also, supra note 27 at 10.

wish to repatriate. My study aims to fill this gap by suggesting that refugees are part and parcel of the decision making process and that they make decisions of whether or not to repatriate based on the options available.

Omata¹¹⁰ argues that repatriation is not always a triumphant experience for returnees. It is common place that voluntary repatriation occurs in countries struggling to emerge from lengthy wars: where peace is fragile, infrastructure weak and the future uncertain.¹¹¹ Accordingly, he opines that there is a high likelihood of refugees facing significant socio-economic challenges while reintegrating in their home states.¹¹² He also notes that ‘homecoming’ is misleading if ‘home’ is to be understood as ‘a place of refugees’ former housing before their exile.¹¹³ In his study of Liberian returnees, he explains that majority of the returnees did not have their houses at the time of the repatriation as they had been destroyed during the war.¹¹⁴ Although, Omata’s study identify the need to re-examine the concept of repatriation as a ‘home-coming’ it has two main shortcomings. First, it neglects to emphasis the need to involve refugees in re-examining the concept of ‘home-coming’. Second, it fails to suggest that refugees are independent decision makers. The rational choice theory pre-supposes that everyone has a choice.¹¹⁵ Refugees will decide whether or not to repatriate if the outcome adds to the sum total of their pleasure or benefit. This study aims to underscore that refugees are independent decision makers and should therefore be involved in the decision making process.

¹¹⁰ Naohiko Omata, 'Repatriation and Integration of Liberian Refugees from Ghana: the Importance of Personal Networks in the Country of Origin' [2012] 26(2) Journal of Refugee Studies 265-269.

¹¹¹Supra note 11 at 131.

¹¹²Supra note 110 at 265.

¹¹³Supra note 110 at 269.

¹¹⁴Ibid.

¹¹⁵Supra note 95.

Chowdhory's¹¹⁶ study highlights an interesting point of view that the non-inclusion of refugees as 'citizens' of the host state influences their motivation to repatriate. I do not concur with her because; there are empirical studies which show that the longer a refugee remains in exile the more difficult it is for them to go home.¹¹⁷ The contribution of Chowdhory's work to this study is that it provides an understanding on the concept of 'home' – as envisioned by refugee communities living in exile. This is based on their ideas of belonging or not (within the territory they are living in). The ideal image of 'home' evokes a strong bond to reclaim status lost while in exile, which is further accentuated by the absence of proper status in exile.¹¹⁸ Chowdhory identifies two factors that influence a refugee decision to repatriate: the fact that refugee status is seen as temporary by the host state thus warranting their lesser status and secondly, refugees' ties to 'home' or homeland. However, the study does not explore other options available to refugees. It emphasizes on local integration as a solution but fails to suggest other alternatives. It also fails to investigate other factors in the COA that influence refugees' decision on whether or not to repatriate such as, insecurity, discrimination and lack of livelihoods. My study will suggest other options available to refugees other than local integration. It will also identify other social, economic and political factors that influence a refugee's decision on whether or not to repatriate.

Bialczyk¹¹⁹ writes that refugees role as 'central actors' in the decision making process to repatriate has diminished over time. She notes that refugees have been 'conspicuously absent' from decision

¹¹⁶Nasreen Chowdhory, 'Assessing "Belonging" and Claims of "Home" among Refugees: A Note on Repatriation in South Asia' [2012] 4(1) South Asian Journal of Peacebuilding 8-15.

¹¹⁷Supra note 106 at 42. Also, in Dadaab camp, refugees who sought asylum in the 1990's are less willing to voluntarily repatriate compared to those refugees who sought asylum in 2011-2012.

¹¹⁸Supra note 116 at 15.

¹¹⁹ Agata Bialczyk, 'Voluntary Repatriation and the Case of Afghanistan: A Critical Examination' [2008] Working Paper (46) Refugee Studies Centre 25.

making process to repatriate.¹²⁰ According to her, voluntary repatriation has been shaped by political interests rather than by refugees.¹²¹ Implying that refugees have no choice but to return.¹²² Thus, challenging the rational choice theory which assumes that individuals have choices. Additionally, Bialczyk argues that ‘home’ can evolve during exile. The COO can undergo significant changes while the refugees are in exile to the extent that, at the time of repatriation, refugees return to a place very different from where they had originally fled from.¹²³ Her work fails to suggest ways in which refugees can be involved in the decision making process to repatriate and in finding other alternative solutions beyond voluntary repatriation. This study will aim to fill this gap by suggesting that an all-inclusive approach to the decision making process and alternative solutions other than voluntary repatriation.

1.7.2 Conditions in the country of origin conducive for voluntary repatriation

Research into conditions in the COO that influence refugees’ decisions to repatriate has been limited. Tripartite agreements are usually written by the UNHCR, COA and COO. More often than not, refugees are not consulted.

Abuya, in relation to repatriation of refugees, questions: ‘When can one say that it is safe for refugees to return to their pre-persecution or pre-conflict home, in other words what are the benchmarks used to determine that the conditions in the home state are deemed sufficiently stable and durable for refugees to repatriate?’¹²⁴ He opines and I agree that, the impact of war and armed conflict on return possibilities is evident: destroyed infrastructure and resources in the home state

¹²⁰Ibid at 16.

¹²¹Ibid at 25.

¹²²Ibid at 26.

¹²³Ibid at 12.

¹²⁴Supra note 11 at 156-157.

discourage returns or make it unsustainable.¹²⁵In other words, conditions in the COO must have improved to enable a refugee decide whether to return. He highlights a gap in both the 1951 Refugee Convention and the 1969 OAU Convention, in that they fail to provide a criteria or guideline for determining when it is safe to repatriate refugees.¹²⁶ According to him, four main pre-requisites should be considered in order to ensure sustainable returns. First, end of hostilities between warring parties. Second, signing of peace deals, third, restoration of democracy and the rule of law and lastly, reconstruction of physical infrastructure and institutions in the country of origin. He concludes that, 'it is difficult to identify with mathematical precision whether conditions in a refugees' state of origin have changed to promote return'.¹²⁷ Case studies from various parts of the globe do offer guidance and this study will aim to do the same.

Bradley¹²⁸ proposes a basic description of the conditions of fair returns. She contends that, the aim of 'a fair return process is to restore a connection of duties and rights between the returnees and their government.'¹²⁹ Bradley argues that, "just as there are conditions such as, access to legal counsel and an impartial judiciary that must be met before a defendant can be said to enjoy her right to a fair trial, there are conditions that govern the just implementation of the refugee's right to return".¹³⁰ She proposes that, minimum conditions of respect for human rights, safety and prospects of economic development¹³¹ must be in place, in the areas of return. The main

¹²⁵Ibid at 131.

¹²⁶Edwin Abuya, 'A Place to call home: Temporary asylum in Australia-Lessons for South Africa' [2004] 15(3) Stellenbosch Law Review 16.

¹²⁷Ibid at 19.

¹²⁸Megan Bradley, 'Back to Basics: The Conditions of Just Refugee Returns' [2008] 21(3) Journal of Refugee Studies 285-304.

¹²⁹Ibid at 286.

¹³⁰Ibid at 291.

¹³¹Ibid at 290.

contribution of Bradley to this study is that, she emphasizes the essence of upholding the choice of a refugee in repatriation – implying decision making. This is in line with the rational choice theory which assumes that individuals have choices. Individuals make choices to optimize their own interests or based on the value of the results expected.¹³² Bradley, however, focuses on refugee return from a moral perspective. This study will look at refugee repatriation from a legal aspect.

Basing his research on interviews with Liberian refugees living in Ghana, Omata notes that, ‘a simple reversal of the threats to physical safety is not sufficient reason to go back to the country of origin.’¹³³ Omata’s biggest contribution to this study is his suggestion which I concur with that, ‘if repatriation is not the most natural post-conflict outcome for forced migrants, the conditions necessary for people to decide to return voluntarily, and when and on what basis they decide to go back are crucial’.¹³⁴ If refugees can determine when and on what basis or conditions they will return, it means that they have a choice. The rational choice theory (as propounded by George Homans) assumes that individuals have a choice and are capable of making considered decisions.¹³⁵ Omata’s research does not explore the link between pre-conditions in the COO that influence refugees’ decision whether or not to repatriate [as identified in his research] and conditions that the UNHCR, COO and COA consider. My study will provide empirical research on pre-conditions to be considered by UNHCR, COO and COA before repatriation of urban Somali refugees. It will also propose a framework that integrates refugees’ perspective with those of the UNHCR, COA and COO.

¹³²Supra note 95.

¹³³Supra note 78 at 1282.

¹³⁴Ibid.

¹³⁵Supra note 95.

According to Hathaway, the ‘fundamental changes’¹³⁶ provision (in the 1951 Refugee Convention) was intended to allow host states divest themselves of the responsibility to offer protection to refugees who could seek the protection of their home state. The 1951 Refugee Convention fails to provide criteria for determining what changes amount to ‘fundamental’. Hathaway observes that, ‘governments have too often taken voluntary repatriation initiatives as a signal that they may commence their own less-than-voluntary repatriations’.¹³⁷ This suggests that conditions in the COO do not have to have improved substantially. A view shared by Bhatia¹³⁸, who notes that majority of repatriation exercises are initiated by host government action or inaction. Relatedly, Sadako Ogata¹³⁹ said that, it cannot be ignored that voluntary repatriation is more and more being compromised by the increasing numbers of forcible returns to unsafe areas. Hathaway’s study focuses on fundamental changes in the COO that justify repatriation of refugees. It however, fails to investigate other conditions conducive for refugee repatriation. This study will fill this gap.

Various scholars have identified conditions [mostly in the home state] that influenced refugees’ decisions to repatriate or consider returning. For example, Koser and Black¹⁴⁰ identify availability of land as key factor that influenced the repatriation of Cambodian refugees from Thailand. They

¹³⁶ James Hathaway, 'The Meaning of Repatriation' [1997] 9(4) *International Journal of Refugee Law* 551-554. Article 1C paras. (1) and (4) of the 1951 Refugee Convention.

¹³⁷ James Hathaway, 'The Right of States to Repatriate Former Refugees' [2005] 20(1) *Ohio State Journal on Dispute Resolution* 193. Also, Marjoleine Zieck, 'Voluntary Repatriation: Paradigm, Pitfalls, Progress' [2004] 23(3) *Refugee Survey Quarterly* 44.

¹³⁸ Michael Bhatia, 'Repatriation under a Peace Process: Mandated Return in the Western Sahara' [2003] 15(4) *International Journal of Refugee Law* 794.

¹³⁹ Statement by Mrs. Sadako Ogata, the then United Nations High Commissioner for Refugees, to the 53rd Session of the United Nations Commission on Human Rights, Geneva, 1 April 1997.

¹⁴⁰ Khalid Koser and Richard Black, *The End of the Refugee Cycle? Richard Black and Khalid Koser (eds), The End of the Refugee Cycle: Refugee Repatriation and Reconstruction* (Berghahn Books 1999) 50.

note that majority of the refugees accepted to settle in any area as long as it was fertile. Moreover, they highlight the importance of social networks [with relatives or other locals] in areas of return. A view that is shared by Omata¹⁴¹ in his study of integration of Liberian refugees upon return from Ghana. Cohen,¹⁴² in a case study of the circumstances under which exiles from Eritrea and Ethiopia were likely to go back to their home country, observed that the most frequently cited consideration in deciding to repatriate voluntarily was ‘changes in home conditions’. Specifically, political change resulting in a new regime. Further, conditions in the COA was also an important consideration.

Tilde Nielsson¹⁴³ on the unsuccessful return and reintegration of Iraqis from Denmark to Iraq identified ten socio-economic factors as highlighted by Iraqi refugees that can work against successful repatriation of returnees thus jeopardizing the sustainability of the repatriation exercise. They include; change in homeland, change by refugee during exile, a feeling of not belonging in the homeland, insufficient information about the home state, desire to leave host state as motive for repatriation, division within the household on the decision to repatriate, home state is still a post conflict society, vulnerability of the returnee, lack of economic opportunities and basic services in the country of origin. Although, the focus on my study is on conditions to consider when repatriating refugees, I agree with the finding of the study that failure to consider the highlighted issues will affect the decision of refugees in a repatriation exercise.

¹⁴¹ Naohiko Omata, 'The End of Refugee Life?' [2014] 26(3) *Journal of Social Justice* 394-401.

¹⁴² Robin Cohen, *The Cambridge Survey of World Migration* (2nd edn, Cambridge University Press 2010) 348-349.

¹⁴³Tilde Nielsson, ‘Circular repatriation: the unsuccessful return and reintegration of Iraqis with refugee status in Denmark’ [2008] UNHCR Research Paper 165, 1-19.

1.7.3 A refugee's right to participate in decision making

The participation of refugees in decision making on whether or not to repatriate has been very minimal as evidenced by the limited literature in this area. Most recently, in 2002, UNHCR developed the Global Consultations on International Protection following discussions with refugees.¹⁴⁴ The discussions looked at comparative analysis of the refugees' personal experiences and their views about the practice in their countries of asylum.¹⁴⁵ The outcome of the meeting was that refugees highlighted some of the political, social and economic challenges experienced during repatriation and came up with recommendations. Unfortunately, the recommendations did not see the light of day in any binding instrument. Nevertheless, the participation of refugees in the consultations was commendable. Broadly, my study aims at underlining the need to include refugees (camp and urban) in the decision making process. Specifically, it focuses on the exclusion of urban Somali refugees in the decision making process to repatriate.

Harrell-Bond¹⁴⁶ observes that, in formulation of voluntary repatriation by UNHCR, COO and COA, there is 'little evidence to suggest'¹⁴⁷ that refugees have been consulted. A view shared by Barragaber who puts it in perspective that, 'refugees do not have much say in the repatriation negotiations between the UNHCR, the host country and the refugee origin country'.¹⁴⁸ This is

¹⁴⁴ The meeting was at Institut du Developpement Social held in Rouen, France on 14-16 September 2001 and attended by approximately seventy refugees living in Europe.

¹⁴⁵ Ibid at 2.

¹⁴⁶ Supra note 106 at 42-45.

¹⁴⁷ Ibidat 44.

¹⁴⁸ Assefaw Bariagaber, *Conflict and the refugee experience: Flight, Exile, and Repatriation in the Horn of Africa* (Ashgate Publishing, Ltd 2006) 162.

consistent with Bentham's theory in that, the exclusion of Somali refugees in the decision making process is at the advantage or benefit of the Kenyans, much to their loss or pain. Collins notes that, 'once governments have decided that it is 'safe' for refugees to return, the agenda of the authorities over-ride those of the refugees'.¹⁴⁹ The assumption being that, no refugee leaves their home country without the expectation that they will return one day. Harrell-Bond and Barragaber acknowledge that refugees have been sidelined in decision making process. However, their studies are theoretical and fail to suggest ways in which the UNHCR, COO and COA can involve refugees in the decision making process. My thesis argues that failure to involve refugees' results to a myriad of problems including, infringement of their rights. This infringement can be resolved by their inclusion. This study will fill the gap by employing statistical analysis and suggesting ways in which refugees can actively participate in the decision making process.

Collins¹⁵⁰ and Barragaber¹⁵¹ argue that refugees are active players who make 'considered' decision during their flight and exile. This view is also shared by Abuya¹⁵² who writes that 'refugees exercise decision making during flight: to flee the situation posing danger to them'. From Homans' perspective, individuals calculate the likely costs and benefits of any action before deciding what to do.¹⁵³ The above suggests that before making the decision to repatriate, refugees weigh whether continued asylum is a better option than returning home. The contribution of Collins and Barragaber to this study is that, refugees do a cost benefit analysis of whether or not to repatriate

¹⁴⁹Supra note 93 at 21.

¹⁵⁰Ibid at 32-51.

¹⁵¹Assefaw Bariagaber, 'States, International Organisations and the Refugee: Reflections on the Complexity of Managing the Refugee Crisis in the Horn of Africa ' [1999] 37(4) The Journal of Modern African Studies 604.

¹⁵² Supra note 126 at 7.

¹⁵³Supra note 95 at 61 'no exchange continues unless both parties are making a profit'.

based on information available to them from the UNHCR, COO and COA.¹⁵⁴ Nonetheless, both studies provide little information on how refugees can be involved in the decision making process.

This study will aim to fill this gap.

Koser¹⁵⁵ focuses on ‘information about conditions at home’. How refugees perceive conditions at home is crucial in their decision of whether or not to repatriate.¹⁵⁶ He examines the interaction between information and repatriation. One of the ways that enable repatriation of refugees is the supply of accurate and objective information.¹⁵⁷ This is consistent with the 1969 OAU Convention and the tripartite agreement standards.¹⁵⁸ Karooma¹⁵⁹ writes that refugees actively search for information about their home country to help them decide whether or not to return. For instance, he observes that in Uganda, Rwandan refugees spent part of each day seeking information about Rwanda through their social networks (recyclers, returnees, new asylum seekers).¹⁶⁰ Afterwards, they would spread the information obtained throughout the camp to keep everyone informed.¹⁶¹ The information shared ranged from security, availability of work, land, health facilities to food and fuel supply.¹⁶² Koser’s and Karooma’s studies identify ways in which refugees use information obtained from their social networks to make the decision of whether or not repatriate. Nonetheless, they are silent on how refugees access information from the UNHCR, COO and COA. The rational

¹⁵⁴Supra note 93 at 32; also, supra note 151 at 604.

¹⁵⁵ Khalid Koser, ‘Information and Repatriation: The Case of Mozambican Refugees in Malawi’ [1997] 10(1) Journal of Refugee Studies 1-2, ‘the decision of whether or not to repatriate is based on a comparison between conditions at exile with conditions at home’.

¹⁵⁶Ibid.

¹⁵⁷Ibid.

¹⁵⁸Article 15(1) of the tripartite agreement.

¹⁵⁹ Cleopas Karooma, ‘Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda’ [2014] working paper series no.103 Refugees Studies Centre 19-20.

¹⁶⁰Ibid at 19.

¹⁶¹Ibid.

¹⁶²Supra note 93 at 32.

choice theory (as propounded by George Homans) argues that individuals make decisions based on the value of the outcome expected.¹⁶³ The theory assumes that refugees have access to information to enable them make a considered decision. Ideally, a refugee makes a ‘rationally calculated’ decision that will benefit or profit him after ‘due consideration of relevant information’ on the conditions in the COO.¹⁶⁴ This study aims at filling this gap in two ways. First, by identifying ways in which refugees can access information from the UNHCR, COO and COA and second, by suggesting that refugees can be used as sources of information to complement what is being provided by UNHCR, COO and COA. This would in turn, enable refugees access credible information which would inform their decision on whether or not to return.

Stein and Cuny¹⁶⁵ argue that, ‘failure to make women’s needs central to overall planning, and failure to involve women in all aspects of the planning, design, and implementation of repatriation programmes, undermine the total refugee programme and may, irresponsibly endanger most refugees’. The reason being that refugee women and those under their care, form the bulk of the returnees.¹⁶⁶ Evenhuis¹⁶⁷ study highlights the invisibility of refugee children in decision making process.¹⁶⁸ Basing his analysis on the Australian refugee decision making framework, Evenhuis notes that it’s discriminatory towards separated children arriving in Australia as compared to adult asylum seekers.¹⁶⁹ The Australian framework fails to facilitate children’s participation in decision

¹⁶³Supra note 95.

¹⁶⁴Supra note 95. Also, Russell King, ‘Theories and typologies’ at 14.

¹⁶⁵Supra note 82 at 182.

¹⁶⁶Ibid.

¹⁶⁷Mark Evenhuis, ‘Child-Proofing Asylum: Separated Children and Refugee Decision Making in Australia’ [2013] 25(3)International Journal of Refugee Law 535-551.

¹⁶⁸Ibid at 540.

¹⁶⁹Ibid at 536. Evenhuis identifies three major short-comings within Australia’s migration system that separated children face; first, lack of durable and efficient migration outcomes; child-inclusive law and procedure; suitable guardianship arrangements.

making. He proposes a system where children are empowered to participate in decision making process on an equal footing as the adults.¹⁷⁰ Refugees' participation in repatriation exercises play an important role in ensuring sustainable returns.¹⁷¹ Both studies underscore the need to include women and children in the decision making process. According to the rational choice theory, individuals have a choice.¹⁷² This theory assumes that women and children have a choice in deciding whether or not to repatriate. In reality however, the views of women and children compared to those of men are generally sidelined in decision making processes. Viewed from this perspective, failure to include women and children in the decision making process will result to a mischief or pain as they women and children have choices and are able to make considered decisions. However, both studies do not detail how women and children can participate in decision making processes and their views given equal consideration as those of men. This study will fill in the gap by identifying ways in which the views of women and children can be given equal consideration in the decision making process to repatriate.

Bakewell¹⁷³ questions the participation of every family member in the decision making process to repatriate. He notes that at times, the decision to repatriate could be made by chiefs or elders on behalf of the community thus, eliminating the participation of individuals.¹⁷⁴ Relatedly, in her research on unsuccessful returns of Iraqi refugees from Denmark, Nielsson¹⁷⁵ notes that the decision to repatriate was made solely by men. She underscores that men, women and children may have different opinions concerning the repatriation process and that, not everyone within the

¹⁷⁰Ibid at 535.

¹⁷¹Supra note 148 at 162.

¹⁷²Supra note 95.

¹⁷³ Oliver Bakewell, 'Refugee Repatriation in Africa: Towards a Theoretical Framework?'[1996] 04/96 Occasional Paper Centre for Development Studies 11.

¹⁷⁴Ibid.

¹⁷⁵ Supra note 143 at 10-12.

household may be willing to repatriate.¹⁷⁶ Bakewell's and Nielsson's works reveal that individuals within a household have been excluded from decision making process on whether or not to repatriate. However, they do not propose practical ways of ensuring that every member in a family unit is involved in decision making process and their voices heard. Viewed from the rational choice theory, these studies assume that every person in a household arrives at the decision to repatriate on their own.¹⁷⁷ In reality, however, the decision to repatriate is usually made by others. My study will fill this gap by suggesting ways in which men, women and youth can effectively participate in decision making process and that their views are given equal weight.

1.8 Justification

In January 2014, following the signing of the tripartite agreement between UNHCR and Governments of Kenya and Somalia, the International Organization for Migration (IOM) supported by the UNHCR carried out intention surveys at the Dadaab camp to determine the number of Somali refugees willing to go back to Somalia. However, no such approach was carried out for the Somali refugees living in urban areas. Thus, the justification for this study. It's worth mentioning that, non-inclusion in the decision making process to repatriate is a problem facing refugees across the global. Accordingly, the thesis used urban Somali refugees living in Eastleigh as a case study. In addition, the study focuses on Somali refugees as opposed to all refugees because the tripartite agreement was signed between the Governments of Kenya and Somalia and the UNHCR.

¹⁷⁶Ibid at 11.

¹⁷⁷Supra note 95.

While this study focuses solely on repatriation of Somalis from Kenya, it ‘acknowledges that parallel and simultaneous return’¹⁷⁸ of Somali refugees is likely to take place within the region (from Ethiopia and Yemen) in the coming years. Therefore, the proposed framework will provide a reference point that can be used by the Governments of Yemen and Ethiopia in the repatriation of Somali refugees from their countries.

The study aims at contributing to the developing jurisprudence across the globe on inclusion of refugees in the decision making process on whether or not return. A lot of literature exists on durable solutions entitled to refugees. However, minimal scholarly work exists on inclusion of refugees in the decision making process. Hence, this study will inform academia, policy makers, humanitarian actors and governments.

1.9 Research methodology

The study was conducted through field work, use of textual analysis and case study. These methods are discussed below.

1.9.1 Field work

The field work was necessitated by gaps identified during my literature review. Limited scholarly work exists on the extent to which inclusion of refugees in the decision making process will lead to their informed decision on whether or not to repatriate. Moreover, limited statistical evidence exists to back up the minimal theoretical information.

¹⁷⁸Supra note 64.

Written permission to conduct the field work was obtained from the National Commission for Science, Technology and Innovation (NACOSTI) in Nairobi.¹⁷⁹The field work was collected from urban Somali refugees (I used urban Somali refugees as a case study), representatives from UNHCR Kenya (Dadaab sub-office), UNHCR Somalia, Danish Refugee Council (an international NGO working with Somali refugees), Refugee Consortium of Kenya (a local NGO working with refugees in Kenya), and officials from the Refugees Affairs Secretariat (formerly Department of Refugee Affairs) and the Directorate of immigration and registration of persons in Kenya. The rationale for this approach was to ensure that key stakeholders in the repatriation process were included from various levels. Thus, managing any biases as far as possible.

A total of 25 interviews were conducted with urban Somali refugees, representatives from UNHCR Kenya (Dadaab sub-office), UNHCR Somalia, Danish Refugee Council (an international NGO working with Somali refugees), Refugee Consortium of Kenya (a local NGO working with refugees in Kenya), and officials from the Refugees Affairs Secretariat (formerly Department of Refugee Affairs) and the Directorate of immigration and registration of persons in Kenya. Of the 25 interviewees, 13 (52%) were male and 12 (48%) were female. An age, gender and diversity approach was used in order to ensure that all views were represented in my research.

I conducted the interviews using two separate interview schedules.¹⁸⁰One, for the institutional interviews and the other one for the urban Somali refugees. The interview schedules gave the

¹⁷⁹Attached as annex five.

¹⁸⁰ Olive M Mugenda and Abel G Mugenda, *Research Methods* (Acts Press 1999) at 72. Attached as annex 1 and 2.

interviewees freedom to respond in their own words and in greater depth. The open ended questions allowed the refugees to share their feelings, thoughts, interests, hopes, motivations, decisions and what they thought was the best way for refugees to be involved in decision making process. In the following section, I will first discuss my interviews with urban Somali refugees in Eastleigh and then my institutional interviews.

I interviewed 19 urban Somali refugees of different age, gender and diversity. A colleague at work introduced me to one of the refugees. The refugee then introduced me to a group of refugees, who also introduced me to others.¹⁸¹ Before the actual interviews, I pre-tested the interview schedule.¹⁸² I conducted the pre-test in order to find out whether the questions were understandable, what questions could be eliminated or added. I did this with one of the refugees in her house in Eastleigh. One of the areas that the pre-testing identified was that some sentences were long and phrased poorly. Changes were effected to express more accurately. Confidentiality and anonymity of the interviewees was assured.¹⁸³ For example, I informed the interviewees that pseudonyms would be used in the analysis and presentation of the research data. Thus, observing the right to privacy of all respondents. Moreover, I sought written or verbal consent from the respondents to conduct the interview and record the information they gave me. I also informed them about the purpose for which the data was going to be used.

¹⁸¹Ibid at 51.

¹⁸²H Russell Bernard, *Social Research Methods: Qualitative and Quantitative Approaches* (Sage Publications, Inc 2000) 254.

¹⁸³Keith F Punch, *Introduction to Social Research: Qualitative and Quantitative Approaches* (2nd edn, Sage Publications Ltd 2005) 100 and 277.

In five of the interviews, the language of the interview was done in English and Somali.¹⁸⁴ This was made possible with the assistance of one of the refugees. She interpreted the interview schedule from English to Somali and from Somali to English. In the other interviews I interpreted the interview schedule from English to Swahili and vice versa. Interviews that I conducted together with the translator took a longer time whereas those that I did alone took a shorter period. The approximate time per interview was one hour. In addition, the use of a translator (one of the refugees) was challenging as some words would be lost in the interpretation. Nevertheless, words closest to what the refugee expressed were used.

Eighteen of the interviews with urban Somali refugees were held in Eastleigh, whereas one was held in Westlands, Nairobi County. I travelled by bus to Eastleigh and Westlands to meet up with the interviewees. The locations of the interviews had been suggested by the respondents as it was convenient for them. I met with the interviewees either in their homes or at restaurants in Eastleigh and Westlands. This is because they felt comfortable meeting at their homes or at the restaurants. In restaurants, we sat in isolated tables to maintain confidentiality. I recorded responses from the interviewees in my notebook and in the interview schedules that I had printed out.

In order to maximize on my trips to Eastleigh, I scheduled my interviews in such a way that I could interview many refugees within a day. However, this was not possible for three interviews which were conducted one per day. I rescheduled the dates as the interviewees had other commitments. Interviews with urban Somali refugees were conducted between June and December 2015. Even

¹⁸⁴Ibid at 177.

after my fieldwork; I was in touch with some of my interviewees. In December 2015, I met with one of the urban Somali refugee interviewees to see how she was doing.

I conducted six institutional interviews. I interviewed a colleague from the Danish Refugee Council who then put me in contact with representatives from UNHCR Kenya and Refugee Consortium of Kenya, and an official from the Refugees Affairs Secretariat.¹⁸⁵ The official from the Refugees Affairs Secretariat then referred me to speak with an official from the Directorate of immigration and registration of persons in Kenya. For my interview with the representative from UNHCR Somalia, a colleague at work introduced me to them. The interviews were conducted in September 2016.

Out of the six institutional interviews, one (UNHCR Kenya) was conducted through Skype as the interviewee was at Dadaab refugee camp, two interviews were held at restaurants (UNHCR Somalia and Refugee Consortium of Kenya) whereas the rest were done at the interviewees offices within Nairobi County. I travelled to meet with interviewees by bus. The location of the meeting was suggested by my interviewees as it was convenient and comfortable for them. At the restaurant, we sat at isolated tables for confidentiality purposes.

Before conducting the interviews, I pre-tested the interview schedule with a colleague at Danish Refugee Council.¹⁸⁶ The pre-test showed that some questions were repetitive. I edited the questions

¹⁸⁵Supra note 180 at 51.

¹⁸⁶C.R Kothari, *Research Methodology: Methods and Techniques* (2nd edn, New Age International Publishers Limited 2004) 118.

in light of the feedback provided. I informed the interviewees about the purpose of my interviews and obtained their informed consent before starting the interviews. Participants were informed of their right to voluntarily agree or decline to participate or withdraw participation any time. Confidentiality and anonymity of the information was assured. I informed the interviewees that pseudonym names would be used in the analysis of the information provided.

The institutional interviews were done in English. I recorded the information in English through note taking in my notebook and in the printed interview schedules. I was not able to schedule my institutional interviews as they were dependent on the availability of my interviewees. Accordingly, the interview date and time was based on the availability of each interviewee. Each of these interviews took approximately forty five minutes.

1.9.2 Use of textual analysis

I read statutes such as the 1951 Refugee Convention, its 1967 Protocol and the 1969 OAU Convention. I also analyzed the gaps in the tripartite agreement governing the Somali refugees' repatriation from Kenya. Other primary sources reviewed included, case laws, the UN SC Resolutions and UNHCR EXCOM conclusions. The research was also based on existing literature on voluntary repatriation. I read and analyzed texts in books, legal journals, newspapers, websites, the internet, magazines, reports, dissertations and theses from other students. My readings and analysis was mostly done from the University of Nairobi, School of Law campus.

1.9.3 Case study

In order to explore ways in which refugees could be involved in the decision making process, the study used urban Somali refugees in Kenya as a case study.¹⁸⁷ This thesis acknowledges that non-inclusion of refugees in the decision making process to repatriate is not a unique problem for urban Somali refugees only, but one that faces refugees across the globe.

1.10 Chapter breakdown

The study has five chapters. Each chapter discusses specific issues on the inclusion of refugees in the decision making process. Below is a breakdown of the chapters.

1. Chapter One : Introduction: General Overview and Outline

This is the introductory chapter; it contains the statement of the problem, the literature review, theoretical framework, justification of the study, the research methodology as well as the scope and the limitation of the study.

2. Chapter Two: Voluntary repatriation of refugees

Chapter two examines the concept of voluntary repatriation in a general manner. It highlights that voluntary repatriation is usually promoted by the UNHCR, COO and COA as the most feasible solution to the refugee plight without examining whether it remains relevant to the refugee crises. Refugees are not involved in deciding whether they want to repatriate or not. UNHCR, COO and COA generally depict voluntary repatriation as returning ‘home’ and assume that refugees want to go back. This view is out of touch with reality. The chapter will suggest ways in which Somali

¹⁸⁷Ibid at 113.

refugees could be involved in the voluntary repatriation and in re-examining it as the most feasible solution.

3. Chapter Three: Conditions conducive for voluntary repatriation

This chapter examines the conditions conducive for the voluntary repatriation of refugees. It highlights that before UNHCR, COA and COO decide to repatriate refugee, they must ensure that conditions in the COO are conducive. One way of doing this is by conducting a thorough assessment of the conditions in the COO. I argue that refugees should be included in these assessments and their views given consideration. Under the tripartite agreement the FGS is responsible for creating conditions conducive for the voluntary return of refugees. However, it does not detail what these conditions include. Thus, this chapter argues that refugees should be involved in developing the basic minimum standards that should be in place before their repatriation. In order for refugees to make an informed decision they should have access to information on the conditions in the COO and participate in the ‘go and see’ visits. These visits will allow them to see the existing conditions in Somalia.

4. Chapter Four: A refugee’s right to participate in the decision making

In order for a refugee to exercise their right of participation, they must have access to information. The tripartite agreement provides that the UNHCR, FGS and GOK should provide accurate and objective information to the refugees to inform their decision of whether or not to repatriate. However, it is silent on modalities in which refugees can access this information. This chapter aims at identifying ways in which information sharing and dissemination among the UNHCR, COO, COA and refugees can be strengthened. The chapter also argues that the non-inclusion of

refugees in the decision making process results to a myriad of legal problems which can be resolved by including them. The chapter identifies ways in which refugees can be involved in the decision making process. Chapter four emphasizes that refugees need to be involved in all the stages of decision making to repatriate.

5. Chapter Five: Summary and Recommendations

This chapter summarizes the key findings of the research, linking them to the preceding chapters. It argues that the identified gaps can be “filled in” if the UNHCR, GOK and FGS involved urban refugees in the decision making process.

1.11 Limitations of the study

The main methodological limitation of this study was that the sample size selected in the fieldwork was small. It does not capture views from all Somali refugees in Kenya. Second, the field work focused on urban Somali refugees living in Eastleigh, Nairobi. In other words, it excluded the views of Somali refugees in the camps. This study acknowledges that, the majority of Somali refugees are found at the Dadaab camp as opposed to urban areas. However, the focus of the thesis was on urban Somali refugees living in Eastleigh. This was due to the fact that in 2014, IOM and UNHCR conducted intention surveys for the Somali refugees at the Dadaab camp but no consultations were held with urban refugees. To enrich the study, I also interviewed staffs from UNHCR Somalia and Kenya, NGOs working with Somali refugees and relevant government officials supporting the repatriation process and they provided information on both Dadaab and urban refugees. Nonetheless, the discourse of the thesis is applicable to all refugees (camp and

urban) as I used the urban Somali refugees as a case study. Third, the project was self-funded. Hence, the sample size determination was influenced largely by limited availability of funds. Fourth, the field work with urban Somali refugees used an interpreter to translate the questions from English to Somali or Swahili and vice versa. Thus, the interviews took longer than planned. Also, some of the original words used by the interviewees may have been lost in the translation. Lastly, it was difficult to schedule my institutional interviews as the time and date of the interviews was dependent on the availability of my interviewees. This was the case for two of my institutional interviews. After several calls and emails, I was able to secure the interviews.

CHAPTER 2

VOLUNTARY REPATRIATION AND PROTECTION OF REFUGEES

I was only a young boy when I arrived in Kenya. We came to Kenya because of the civil war in Somalia in 1991. Now I am 31 years. I am afraid and I do not want to

return. I do not know Somalia. How can I say Somalia is home? ...I absolutely do not want to go back to Somalia. Its better they take us somewhere else.¹⁸⁸

2.1 Introduction

Of the three durable solutions – voluntary repatriation, resettlement to a third country and local integration into the host state – voluntary repatriation is viewed by the UNHCR as ‘the ideal solution to refugee problems’.¹⁸⁹ As a solution to the refugee crisis, voluntary repatriation gained preference in late 1980’s following a paradigm shift in the preferred solution: from resettlement to voluntary repatriation.¹⁹⁰ Commentators attribute the shift to Western states reactions to ensure that ‘the growing global refugee population did not flood their borders.’¹⁹¹ In fact, UNHCR declared the 1990’s as the decade of voluntary repatriation.¹⁹²

Recently, voluntary repatriation has been promoted due to lack of burden sharing and donor fatigue.¹⁹³ Chimni, notes that majority of refugees are located in third world countries which shoulder the burden of hosting the refugees with minimal support from donors or developed

¹⁸⁸ Interview with Abdi in Eastleigh, Nairobi County (22/11/2015).

¹⁸⁹ UNHCR EXCOM Conclusion No. 74 (XLV)- 1994.

¹⁹⁰ Supra note 11 at 155. Also, supra note 167 at 2.

¹⁹¹ BS Chimni, 'Legal and Policy Issues relating to UNHCR's involvement in the Protection, Facilitation or Encouragement of Voluntary Repatriation' [1993] UNHCR Round table consultations on voluntary repatriation2. Also, supra note 106 at 52, “It was feared that the flow could not be contained and that Europe would be inundated. During the 1980s the numbers of refugees arriving by sea or by air to claim asylum in the West greatly increased.” Currently, the European Union entered into agreement with Turkey to screen all Syrian refugees before they could admit them into their countries.

¹⁹² Sadako Ogata declared that 1990’s would be “the decade if voluntary repatriation” following numerous repatriation exercises in Angola, Iraq, Somalia, Cambodia. Supra note 100, ‘more than 9 million refugees returned home between 1991 and 1996’.

¹⁹³ James Hathaway, 'The Right of States' ... at 175 notes that, “burdens on asylum countries can be extreme, and may only be partly offset by the arrival of international aid and protection resources”. He also notes that there is disinclination of the wealthier countries that fund UNHCR and most agencies that meet the costs of protecting refugees. Megan Bradley, *Refugee Repatriation; Justice, Responsibility and Redress* (Cambridge University Press 2013) 8, says that, the current trend of conflicts being- protracted conflicts and the hospitality given by host countries towards refugees (especially in Africa) is “flagging” and unlikely to go on without “donor support and burden sharing”. Supra note 11 at 137-138, “...67 per cent of refugees in protracted situations live in the world’s poorest countries” and “...these states are themselves economically disadvantaged and, therefore, unable to meet the cost of providing effective security.” Also, supra note 11 at 154; “it is unrealistic to expect African governments to continue hosting large numbers of refugees without a solid resource foundation”. Supra note 196 at 4.

countries.¹⁹⁴ Consequently, host governments are unable to cater for the needs of the refugees in addition to those of their own citizens and thus, encourage voluntary repatriation. Mary said:

Donor fatigue contributed to the signing of the tripartite agreement promoting voluntary return Somalis. The Syrian Crisis affected UNHCR Somalia donor money. There was also pressure from the GOK because of terrorism within the country (the terrorist attack Westgate Mall).

According to Tom:

There is a lot of pressure from the GOK to the UNHCR to repatriate refugees. In turn, refugees are being coerced to make the decision to return, though still maintaining that the repatriation is voluntary.

Though voluntary repatriation has been given a lot of attention by the UNHCR,¹⁹⁵ it remains doubtful whether it remains relevant as the ‘most preferred solution’ to the refugee crisis.¹⁹⁶ With the increasingly protracted nature of conflicts as in Afghanistan, Democratic Republic of Congo and Somalia, the number of refugees repatriated has declined.¹⁹⁷ New conflicts as in the case of South Sudan, Central African Republic, Mali and Syrian Arab Republic have contributed to an increase in the number of refugees globally which is not commensurate to the existing durable solutions.¹⁹⁸ To put it into perspective, in 2014, there were a total of 19.5 million refugees with nearly three million new refugees.¹⁹⁹ The number of refugees repatriated in the same year was 0.65%, whereas those resettled to third countries were over 0.54%.²⁰⁰ Local integration has

¹⁹⁴ Supra note 191 at 4.

¹⁹⁵ As witnessed by the number of Executive Committee Conclusions on the subject matter.

¹⁹⁶ Supra note 78 at 1294.

¹⁹⁷ IRIN report, ‘Durable solutions for refugees prove elusive’, available at <http://www.irinnews.org/report/101735/durable-solutions-for-refugee-prove-elusive#.VjE4ZRnfom8> (10 July 2015) accessed on 12/07/2015...“In 2014, just 126,000 refugees were able to go home – the lowest number of returns recorded since 1983 and a significant drop from the previous year when 415,000 went home.”

¹⁹⁸ UNHCR, *World at War; UNHCR Global Trends on Forced Displacement in 2014* (UNHCR 2015) 3.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

remained elusive as it is ‘a politically sensitive and unpopular option in many host countries unwilling to accept the idea of refugees competing with locals for jobs and resources’.²⁰¹ Ben shared the following sentiments:

In terms of other durable solutions, Somali refugees have no options but to return. Local integration is not viable in Kenya and resettlement is not a right, it’s a protection tool and only one percent are usually resettled.²⁰²

The figure below shows the declining trend of refugee repatriations in the world. It justifies the need to re-examine voluntary repatriation as the most feasible solution to the plight of refugees.

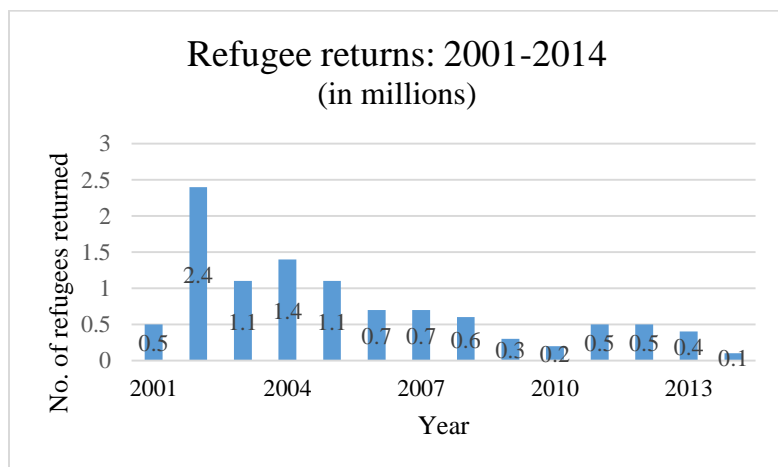


Figure 1: Number of refugee returns between 2001 and 2014 globally.

The foregoing suggests that other alternatives to the three durable solutions ought to be explored by States and the UNHCR in order to deal with the refugee crisis. With regards to the current study, Tom recommended:

Somalia should join the East African Community (EAC). The EAC protocol allows people within Kenya, Uganda, Tanzania, Rwanda and Burundi to move and work within the region. Since Somalis are living in Kenya, Uganda, Tanzania and Rwanda, it would be easy for refugees to get work permits to work in the region. Thus, solving the refugee problems.²⁰³

²⁰¹ Supra note 197.

²⁰² Interview with Ben over skype (21/09/2016).

²⁰³ Interview with Tom at City Centre, Nairobi (09/09/2016).

As written in chapter one, urban Somali refugees in Kenya contribute to the economy of the country.²⁰⁴ Consequently, the GOK must take note of the economic benefits arising from the presence of urban Somali refugees and review their status. In order to do so, the GOK must review the Refugee Act of Kenya (2006) so that refugees conducting business in Kenya are granted permanent residency.

My interviewees suggested the following alternative options which can be explored by the GOK, FGS, UNHCR and the Somali refugees. They include; permanent residency, enhancing accessibility to business and work permits for Somali refugees, application for citizenship (mixed marriages between Somali and Kenyans) and repatriation in a phased manner. In coming up alternative options to the voluntary repatriation, refugees must be involved in the process as the decision is about their lives.

2.2 The right to return under international law

Theoretically, no refugee can be repatriated against their will.²⁰⁵ In other words, as long as an individual satisfies the definition of a refugee as outlined in the legal instruments, they cannot be forcefully returned.²⁰⁶ Nonetheless, in exceptional circumstances a refugee may be legally and forcefully returned²⁰⁷ to their country of origin. The international community has designed many legal instruments aimed at protecting refugees. These instruments fall under various categories

²⁰⁴Supra note 11 at 151 and supra note 23 at 23.

²⁰⁵Article 5 (1) of the 1969 OAU Convention.

²⁰⁶Article 33 (1) of the 1951 Refugee Convention.

²⁰⁷Edwin Abuya, 'Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective' [2007] 1(19) International Journal of Refugee Law 51-95.

namely: international human rights instruments (United Nations Convention Relating to the Status of Refugees²⁰⁸ and its 1967 Protocol, the Universal Declaration of Human Rights²⁰⁹), regional legal instruments (The Organization of Africa Union Convention governing the specific aspects of refugee problems in Africa²¹⁰, the African Charter on People and Human Rights²¹¹) and soft law instruments (1984 Cartagena Declaration on Refugees).²¹²

Voluntary repatriation is implied under articles 1C (1) and (4) of the 1951 Refugee Convention. A person ceases to be a refugee once they voluntarily re-avail them self to the protection of their home state²¹³ or if the refugee voluntarily re-establish them self in the country of origin.²¹⁴ In both circumstances, the refugee would no longer be in need of international protection.

The 1969 OAU Convention provides for voluntary repatriation under article(s) five. It also mandates all member states to respect the voluntary character of repatriation in all cases and ensure that no refugee is repatriated against their will.²¹⁵ The 1969 OAU Convention was passed in response to the weakness inherent in the 1951 Refugee Convention.²¹⁶ It plays a key role in reflecting the African approach to refugees and has gained widespread acceptance by almost all

²⁰⁸Supra note 16.

²⁰⁹Supra note 21.

²¹⁰ Supra note 17.

²¹¹Article 12 (2) of the ACPHRs.

²¹² Cartagena Declaration on Refugees (19-22 November 1984). The Declaration of Cartagena emerged in the context of the conflicts that seriously affected Central America at the end of the 1970s and early 1980s. The civil wars in Nicaragua, El Salvador, and Guatemala resulted in the displacement of thousands of people.

²¹³Article 1C (1) of the 1951 Refugee Convention.

²¹⁴Article 1C (4) of the 1951 Refugee Convention.

²¹⁵ Article 5(1) of the 1969 OAU Convention.

²¹⁶ Article 1 A (2) of the 1951 Refugee Convention provides that, a refugee is any person affected as a result of the events which occurred before 1 January, 1951.

states, at least on paper. Additionally, it provides a model for other regions grappling with mass refugee influx, such as Central America.²¹⁷

International human rights instruments recognize the right of individuals to return to their country of origin. The Universal Declaration of Human Rights²¹⁸ (UDHR) provides for the right of return under Article 13 (2) as follows, ‘everyone has the right to leave any country, including his own, and to return to his country’. This implies that a country of origin has an obligation to admit a refugee when he/she decides to go back to his country and whether they choose to exercise this right or not is a matter of individual decision. A similar provision was adopted by the 1966 International Covenant on Civil and Political Rights (ICCPR) under Article 12 (4), which provides that, ‘no one shall be arbitrarily deprived of the right to enter his own country’.²¹⁹ The International Convention on the Elimination of all Forms of Racial Discrimination under Article 5(d) (ii) provides for ‘the right to leave any country, including one's own, and to return to one's country’. The United Nations Convention on the Rights of the Child provides that, ‘States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country’.²²⁰

There are also soft laws that have provided for voluntary repatriation such as, the 1984 Cartagena Declaration on Refugees.²²¹ Conclusion 12 ‘reiterates the voluntary and individual character of repatriation of refugees and the need for it to be conducted in conditions of absolute safety’. The

²¹⁷Supra note 212.

²¹⁸Article 13 (2) of the UDHR.

²¹⁹ Article 12(4) of the ICCPR.

²²⁰ Article 10 (2) of the United Nations Convention on the Rights of the Child, adopted on 20 November 1989, GA res.44/25 U.N Doc. A/44/736 1989 (entry into force 2 September 1990), (UN CRC).

²²¹ Supra note 212.

United Nations General Assembly (UNGA) has upheld the right to return in general terms. For example, in 1996 the UNGA reaffirmed that ‘...voluntary repatriation, when feasible, is the ideal solution to refugee problems, and calls upon countries of origin, countries of asylum, the Office of the High Commissioner and the international community as a whole to do everything possible to enable refugees to exercise their right to return home in safety and dignity.’²²²

In sum, right to return basically means that a refugee has a right to decide how and when they should return home. This implies choice. Thus, in the words of George Homans (proponent of the rational choice theory), refugees make a calculated decision of whether or not to exercise their right of return based on the expected output in the COO.²²³ Zeinab understood this:

The voluntary repatriation is not appropriate at this time. I would suggest to UNHCR, GOK and FGS to let refugees take their time until they [refugees] find it appropriate to go back home. There is insecurity in Somalia and the GOK and FGS have not put in place mechanisms to ensure the security of refugees while returning.²²⁴

2.3 Voluntary repatriation of refugees

The international refugee law anticipated that the refugee status would be temporary. The design of the 1951 Refugee Convention was that, refugee status cease to exist once a refugee re-establishes themselves in the COO.²²⁵ Similarly, the framing of the 1969 OAU Convention was that, ‘voluntary repatriation should be the ultimate solution for African refugees’²²⁶ once the

²²² United Nations GA resolution A/RES/50/152 (1996).

²²³ Supra note 95.

²²⁴ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

²²⁵ Article 1(C) (4) of the 1951 Refugee Convention.

²²⁶ Supra note 93 at 24. See, article 5 of the 1969 OAU Convention.

conflict ended. The assumption was that African refugees [fleeing colonial domination] would most likely want to go back to their countries following national independence.²²⁷

Theoretically, article 33 (1) of the 1951 Refugee Convention suggests that refugees have a choice of repatriating when they decide to do so.²²⁸ This is because; the article protects refugees from being returned to areas where their life or freedom would be at risk. No reservations are permitted on the non-refoulement principle. In practice however, this is an unrealistic objective because of three reasons. First, refugees are usually not consulted by the UNHCR, COO and COA on whether or not they want to return. They are only informed that they have to return to their COO. Second, needless to say, in many countries in the world, there have been increasing incidences of forced repatriations of refugees, such as Syrian refugees from Greece and Turkey.²²⁹ In such instances, refugees are not given alternative options.

Third, host communities have become increasingly hostile towards refugees. In South Africa, for example, empirical data shows that South Africans are indeed xenophobic towards refugees.²³⁰ Abuya writes that South Africa must address ‘the growing xenophobic and anti-refugee attitudes together with outright intolerance of asylum seekers’.²³¹ Indeed, such attitudes and intolerance undermine refugees’ choice in deciding whether or not to repatriate. The hostile environment

²²⁷Ibid.

²²⁸This article provides for the right of non-refoulement. Also, supra note 93 at 21.

²²⁹Amnesty International, ‘Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal’, (1 April 2016) available at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> accessed on 16/04/2016. In the past, Rwandese refugees from Tanzania were forcefully repatriated.

²³⁰Supra note 126 at 18

²³¹Ibid.

eventually forced some refugees to leave South Africa. The foregoing challenges Homans's assumptions that individual have choices.²³² Lack of options leave refugees without a choice but to go back home.

Stein and Cuny argue that, involuntary returns 'represent a failure by the international community to provide for and protect refugees'.²³³ Implying that international laws should be interpreted in ways that serve to strengthen rather than weaken the protection of refugees against the vulnerabilities to which they are exposed.²³⁴ The best form of protecting refugees against forced returns would be to involve them in the decision making process to repatriate. The tripartite agreement provides that, UNHCR, FGS and GOK 'shall provide Somali refugees with objective, accurate and timely information on current conditions in Somalia' to inform their decision of whether or not to repatriate.²³⁵ The supply of accurate and objective information is one of the ways in which refugees participate decision making.²³⁶ Mohamed suggested:

The only thing that can ensure voluntary return is to consult with the refugees. I am sure there are refugees who are willing to return if they are consulted. I would recommend to the UNHCR, GOK and FGS to improve refugees' involvement in the process of repatriation as now [in Kenya] it is not involving.²³⁷

Tom said:

For Somalis to return to their COO, they must be involved in the repatriation process. Refugees have their own community leaders. These leaders should be identified and be made part and parcel of the strategies and programs towards repatriation of Somali refugees.²³⁸

²³²Supra note 95.

²³³Supra note 82 at 181.

²³⁴Supra note 26 at 325.

²³⁵Article 15 (1) of the tripartite agreement.

²³⁶Supra note 155 at 2.

²³⁷Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

²³⁸Interview with Tom in City Centre, Nairobi (09/09/2016).

The dilemma with regards to involvement of urban Somali refugees in the voluntary repatriation is; at what stage should urban Somali refugees be involved? At what point is the voice of the refugee supposed to be heard? My interviewees said that Somali refugees (urban and camp) were excluded in the drafting and signing of the tripartite agreement. After it was signed, there were some efforts at Dadaab camp to involve refugees through camp committees. However no such approach was done for the urban Somali refugees. Since the tripartite agreement is coming to an end in November 2016, I would recommend to the UNHCR, GOK and FGS to involve Somali refugees in the negotiation of an extension or in the creation of a new one. The tripartite agreement says very little about the inclusion of refugees.²³⁹ This thesis will aim to suggest more ways in which urban Somali refugees can be involved the decision making process.

2.4 Re-examining voluntary repatriation

Three fundamental dilemmas arise while describing voluntary repatriation of refugees to a country experiencing protracted conflict as in Somalia. First, there seems to be an assumption by UNHCR and states that once the cause of their flight is no longer in existence, refugees will identify with their home country and will want to return.²⁴⁰ Omata observes that institutions dealing with refugees depict repatriation as 'home coming'.²⁴¹ Harrell-Bond notes that 'it is common sense to believe that the best place for refugees is home.'²⁴² This is demonstrated by Zeinab, who said that:

²³⁹Article 4(5) of the tripartite agreement.

²⁴⁰ Supra note 27 at 42. Also, BS Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' [2004] 23(3) Refugee Survey Quarterly 59.

²⁴¹Supra note 110 at 269.

²⁴²Supra note 106 at 43.

Home is the best place to be in but the current circumstances [in Somalia] are making me stay here [Kenya].²⁴³

Mohamed confessed that:

Of course Somalia is home and will forever be! Some of my family members are still living in Somalia and I have to go back one day.²⁴⁴

The assumption is dangerous and out of touch with the reality. It does not take into consideration that some refugees may opt not to return.²⁴⁵ Some of the urban Somali refugees interviewed came to Kenya when they were children were not willing to go back to Somalia. Abdi commented:

I was only a young boy when I arrived in Kenya and I do not know Somalia. How can I say Somalia is home? ...I absolutely do not want to go back to Somalia.²⁴⁶

Moreover, many of the returnees are going back to ‘destroyed infrastructure and resources in their home state,’²⁴⁷ which cannot be equated to a ‘home’. As Yusuf said:

There are no schools, hospitals, no employment, no freedom of religion, no trust among people, there is revenge killing.²⁴⁸

Black and Koser have depicted repatriation as ‘a new life cycle in a challenging environment’.²⁴⁹

A view shared by UNHCR.²⁵⁰ Mohamed understood this too well:

Rebuilding my livelihood conditions will be very challenging...back at home I don’t have any support at all. Now, I am getting small money. I can save a little and I can send some to my family. I am hoping to get more opportunity here [in Kenya] and improve my financial capacity before I return home.²⁵¹

²⁴³ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

²⁴⁴ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

²⁴⁵ During repatriation exercises a refugee may opt not to return where the “well-founded fear of persecution” persists.

²⁴⁶ Interview with Abdi in Eastleigh, Nairobi County (22/11/2015).

²⁴⁷ Supra note 11 at 131.

²⁴⁸ Interview with Yusuf in Eastleigh, Nairobi County (22/11/2015).

²⁴⁹ Supra note 140 at 11-12.

²⁵⁰ UNHCR, Voluntary Repatriation: International Protection Handbook (Geneva: UNHCR, 1996), chapter 6.4 (UNHCR Handbook).

²⁵¹ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

The above comments suggest that, though urban Somali refugees consider Somalia to be home, they were not willing to repatriate yet. Thus, the need to re-examine the simplistic homecoming perception. The UNHCR, GOK and FGS should consult with urban Somali refugees and find out first whether or not they would like to repatriate. If they agree, then it would be important for the UNHCR, GOK and FGS to sit down and discuss the conditions that should be in place before repatriation. A comprehensive plan of the minimum basics should be agreed upon by refugees, UNHCR, COO and COA. If urban Somali refugees decide that they do not want to repatriate, then UNHCR, GOK and FGS should discuss with them about other options. As highlighted above, majority of the interviewees mentioned insecurity and lack of basic services as one of the main reasons of opting to stay. Thus, before repatriating urban Somali refugees, security and basic services must be in place.

Second, repatriation has been closely linked to the ‘myth of nostalgia for a home and memories of the past associated with return’.²⁵² The assumption being that the returnees will be going back to a happy and safe home. Bakewell opines that, ‘the dreams of going home may be based on nostalgia for a past which cannot be recreated and when return is practicable, it is not necessarily desirable’ to the refugees.²⁵³ Bashir understood the essence of the term home:

I believe a home to be a place where you are physically and emotionally safe, and as far as I know, I am not safe in Somalia.²⁵⁴

Abdi M, when asked whether he would like to go back to Somalia said:

²⁵²Vincent Chetail, 'Voluntary Repatriation in Public International Law: Concepts and Contents' [2004] 23(3) Refugee Survey Quarterly 2. Also, supra note 72 at 45, the assumption that “no refugee leaves his homeland without the expectation that he will one day return.”

²⁵³ Supra note 173 at 10.

²⁵⁴ Interview with Bashir in Eastleigh, Nairobi county (28/11/2015).

Yes. I don't want to be a refugee forever. However, the security and economic conditions in Somalia are threatening. If these conditions were promising, I would go back home.'²⁵⁵

Needless to say, a refugee who witnessed direct violence or had traumatic experiences [in the COO] is not likely to repatriate despite their strong bond with their COO or their duration in exile.

Abuya²⁵⁶ borrowing the words of one Iraqi female refugee notes:

“Nobody wants to leave a happy safe home, we don't come because of choice. We leave our country and our homes because we can die if we stay.”

As highlighted above, when return is proposed it may not necessarily be desirable for the refugees. Thus, even if voluntary repatriation is considered as the most feasible solution to the refugee crisis, UNHCR, COO and COA need to consult with refugees in deciding to repatriate them. The tripartite agreement provides that, ‘the decision of the refugees shall be based on their freely expressed wish and their relevant knowledge of the conditions in the COO.’²⁵⁷ In other words, the UNHCR, FGS and GOK should not assume that Somali refugees want to go back to their COO. The views of those who do not want to repatriate should be considered and alternative options such as permanent residency be provided. In addition, continued protection and assistance must be assured by UNHCR and the GOK to those who choose to stay.²⁵⁸

The third issue is that, ‘return to one's own country’ excludes refugees who have been born in exile.²⁵⁹ Many of the refugees living in protracted refugee situations are at risk of losing proof of

²⁵⁵Interview with Abdi M at Eastleigh, Nairobi County (17/11/2015).

²⁵⁶ Supra note 126 at 8.

²⁵⁷Article 10 (2) of the tripartite agreement. The UNHCR, COA and COO are shall provide accurate and objective information.

²⁵⁸ UNHCR, EXCOM Conclusion No.101 (LV) 2004.

²⁵⁹ Supra note 173 at 8.

their identity with their countries after being in exile for decades. The risk of ‘statelessness’ is heightened for ‘second and third generation refugees’ who have been born in exile. This is because they are not citizens of the COA and at the same time, cannot be said to be returning to ‘their own country’.²⁶⁰ Not surprising, the second and third generation urban Somali refugees or those who left Somalia at a very young age do not identify with their parents’ COO. As Yusuf commented:

I do not know Somalia. I came to Kenya when I was a baby and I do not know Somalia. How can I agree to go back? ...I have never seen Somalia. So there is no way I can go back even if it’s peaceful.²⁶¹

The rational choice theory (as propounded by George Homans) assumes that individuals have choices.²⁶² However, for many refugees who fall in this category, return to Somalia may not be their choice. In the context of international refugee protection, the fundamental question is whether repatriation implies an inherited refugee status.²⁶³ Neither the 1951 Refugee convention nor the 1969 OAU convention contain provisions that address refugee children born in exile. In developing alternative options for Somali refugees born in Kenya, UNHCR, GOK and the FGS must involve them. It would be important to listen to their views so that their concerns are taken into consideration when developing or reviewing policies to accommodate them.

In sum, there is a need to re-examine the simplistic home-coming perception of voluntary repatriation by the UNHCR, COO and COA. In re-examining this perception, refugees should be involved.

²⁶⁰ Ibid.

²⁶¹ Interview with Yusuf in Eastleigh, Nairobi County (22/11/2015).

²⁶² Supra note 95.

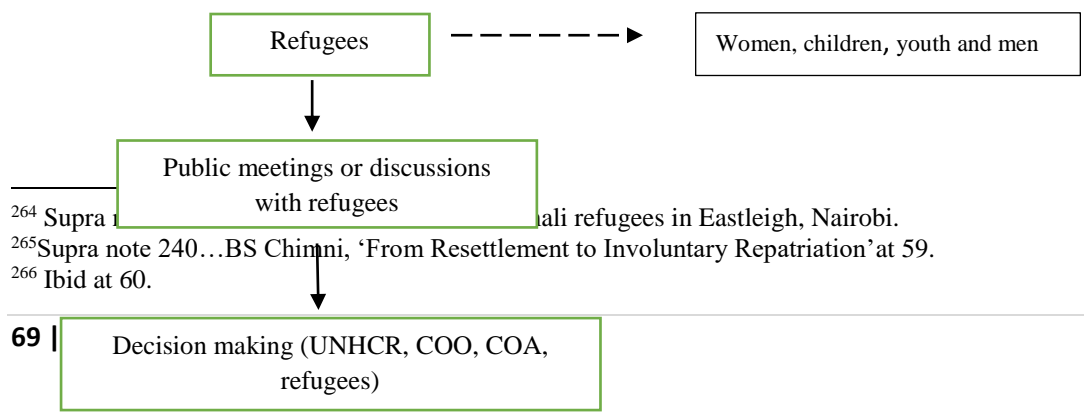
²⁶³ Supra note 173 at 8.

2.5 Conclusion

For many refugees repatriation is a difficult question and they do not speak longingly about going home. A considerable number of refugees are still reluctant to return.²⁶⁴ Advocates of voluntary repatriation have assumed that all refugees desire to go home.²⁶⁵ They take this as a statement of fact without interrogating what the refugees want. In reality this is not accurate. Chimni rightly observes that, an idealized image or expression of what is repatriation has ‘helped legitimize measures which compel a refugee to repatriate.’²⁶⁶ It is important to acknowledge that significant changes do occur in a refugee’s life during a long exile and when the question of repatriation arises it does not sit very easily with them. They are forced with a dichotomy of whether to ‘return or stay’.

There is a need to re-examine the simplistic home-coming perception of voluntary repatriation by the UNHCR, COO and COA. In re-examining this perception, refugees should be involved. Specifically, second and third refugees born Kenya who face statelessness in case they are repatriated. Also, refugees in mixed marriages and those already with established businesses in Kenya.

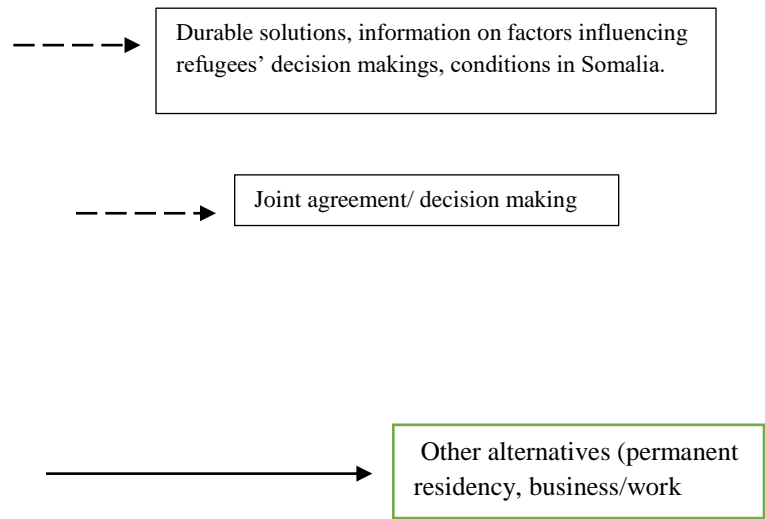
Figure 2: The flow chart depicting a model for the inclusion of refugees.



²⁶⁴ Supra note 240...BS Chimni, ‘From Resettlement to Involuntary Repatriation’ at 59.

²⁶⁵ Supra note 240...BS Chimni, ‘From Resettlement to Involuntary Repatriation’ at 59.

²⁶⁶ Ibid at 60.



CHAPTER 3

CONDITIONS CONDUCTIVE FOR VOLUNTARY REPATRIATION

In any voluntary repatriation, there must be safeguards as to the voluntary nature of the return process, safeguards as to the treatment upon return and continued asylum for those who do not repatriate or choose to remain as refugees. UNHCR and the government of Somalia should ensure we have free water, education and medical support in the areas of return.²⁶⁷

²⁶⁷ Interview with Bisharo in Eastleigh, Nairobi County (15/11/2015).

3.1 Introduction

Bisharo's comment above expresses the pre-conditions put forward by the urban Somali refugees for a successful voluntary repatriation. The essence of establishing pre-conditions before repatriating refugees is to ensure that conditions in the COO are conducive to sustain the return and reintegration of returnees.²⁶⁸In other words, that refugees' return in safety and dignity.²⁶⁹

According to my literature review, a gap exists in both the 1951 Refugee Convention and the 1969 OAU Convention, in that they fail to provide a criteria or guideline for determining when conditions are safe in the COO to repatriate refugees.²⁷⁰ Similarly, the tripartite agreement is conspicuously silent on the pre-conditions to be put in place before repatriating Somali refugees. The FGS has a responsibility of creating conditions conducive to the return of Somali refugees.²⁷¹ Conspicuously missing in the tripartite agreement is a further provision breaking down what 'conditions conducive' for return entail.

Chapter three aims at suggesting that, in order to fill in the gap in the international refugee laws and in the tripartite agreement, refugees must be involved in development of the minimum basics of return that should be in place in the COO before any repatriation. One way of achieving this is through the establishment of a technical committee comprising of refugees, UNHCR, NGOs, GOK and FGS representatives.²⁷² In this forum, refugees' views on the basic conditions that should be in place before going back must be listened to and taken into action. For instance, in the voluntary

²⁶⁸Article 25 (iii) of the tripartite agreement.

²⁶⁹UNHCR handbook, chapter 2.4

²⁷⁰ Supra note 126 at 16. Also, supra note 128 at 291 and Saul Takahashi, 'The UNHCR Handbook on Voluntary Repatriation: The Emphasis of Return over Protection' [1997] 9(4) International Journal of Refugee Law 605.

²⁷¹Article 25 (iii) of the tripartite agreement.

²⁷²Article 4(7) of the tripartite agreement.

repatriation of Mauritanian refugees from Senegal, refugees took an active role in the organization of their return.²⁷³ They came up with eleven conditions for their return and the full list was accepted by the UNHCR, Governments of Mauritania and Senegal. Similarly, in Guatemala, refugees were directly involved in negotiating the conditions of return with their government.²⁷⁴ When refugees participate in drawing up of the conditions for their voluntary repatriation, they will be able to make an informed decision of whether or not to repatriate.

After the development of the minimum basic conditions for return, urban Somali refugees should take part in the go and see visits in the COO to verify that the conditions are indeed conducive for repatriation. The visits to the areas of return in Somalia will enable them make an informed decision of whether or not to repatriate. The rational choice theory assumes that individuals make calculated decisions based on the expected value of the outcome.²⁷⁵ Viewed from this perspective, a refugee will make a calculated decision of whether or not to repatriate after evaluating the conditions in the COO with those in exile. He will decide to repatriate based on the one that has the highest value.

Chapter three examines conditions conducive for the voluntary repatriation of urban Somali refugees. Four pre-requisites²⁷⁶ that must be met before encouraging voluntary repatriation have been identified. These are; a tripartite agreement between UNHCR, and COO and COA²⁷⁷,

²⁷³Leonora Macewen, 'Voluntary repatriation and the participation of Mauritanian refugees' [2010] 34(1) Forced Migration Review 72-74.

²⁷⁴Supra note 101 at 18 at para 101.

²⁷⁵Supra note 95.

²⁷⁶ UNHCR, EXCOM Conclusion No. 40 (XXXIV) -1985 and UNHCR, EXCOM Conclusion No. 18 (XXXI)-1980.

²⁷⁷Article 8(b) of the Statute of the Office of the United Nations High Commissioner for Refugees (GA res. 428(V), 14 December 1950), hereinafter Statute of the UNHCR.

fundamental changes in the country of origin²⁷⁸, return in safety and in dignity²⁷⁹ and the voluntary nature of refugees' decision.²⁸⁰ I argue that, in establishing conditions conducive for the voluntary repatriation, urban Somali refugees can play an active role in decision making and implementation of their return. In addition, ways in which urban Somali refugees can be involved in developing pre-conditions for their have been suggested.

3.2 Creating conditions conducive to return

It's common place that, repatriation takes place in countries emerging from war and struggling to achieve basic development standards.²⁸¹ Thus, the COO must ensure that certain pre-requisites are in place before the actual repatriation of refugees commences. Abdi M understood the above clearly:

UNHCR and the government of Somalia should create an enabling environment by ensuring that there is restoration of peace, and provision of financial support for my livelihoods. I strongly emphasize the safety factor.²⁸²

If states want their people to return, they must create conditions conducive for the voluntary repatriation of refugees.²⁸³ A view also shared by the UNHCR.²⁸⁴ The 1969 OAU Convention obligates the COA and the COO to create conditions that will ensure the voluntary repatriation of refugees.²⁸⁵ Under the tripartite agreement, the FGS is responsible for creating conditions

²⁷⁸ Article 1(C) (5) and (6), 1951 Refugee Convention.

²⁷⁹ UNHCR Handbook, chapter 2.4.

²⁸⁰ Article 5 of the 1969 OAU Convention.

²⁸¹ Supra note 128 at 290.

²⁸² Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

²⁸³ Supra note 106 at 61.

²⁸⁴ UNHCR, EXCOM Conclusion Number 29 (XXXIV) – 1983. It calls upon governments to facilitate the work of UNHCR 'in creating conditions favourable to and promoting voluntary repatriation...'

²⁸⁵ Article 5 (2), (3), (4) of the 1969 OAU Convention.

conducive for the voluntary repatriation of Somali refugees.²⁸⁶ In other words, the COO determines the basic or minimum conditions in which refugees will repatriate. The rational choice theory assumes that individuals have choices and thus, are able to make calculated decisions.²⁸⁷ At present, however, Somali refugees (urban and camp) do not have a choice in determining the conditions of their return. Ben said:

The responsibility of ensuring that conditions are conducive for the return of Somali refugees is on the FGS. However, the minimum basics are not on ground.²⁸⁸

As highlighted earlier in this chapter, the 1951 Refugee Convention and the 1969 OAU Convention places no minimum standards on the quality of this ‘homecoming’.²⁸⁹ Takahashi also notes that, none of the legal instruments provide for ‘an in-depth reference’ to the pre-requisites for voluntary repatriation.²⁹⁰ Sadly and unfortunately, the tripartite agreement is also silent on what these conditions entail. The lack of clear guidelines on what should be in place prior to returning refugees poses a genuine risk to the rights of the returnees. The apprehension is real. Indeed, at the time of submitting this thesis, the Jubaland government in Somalia had detained approximately 1,200 returnees at the Dhobley transit centre on the grounds of inadequate standard of living conditions in the return areas.²⁹¹ My interviewees said that gap can be filled in by consulting with both urban and camp refugees on the existing conditions in their return areas. This way, refugees could shed light on the minimum basics that should be in place before repatriation. For instance, Andrew said:

²⁸⁶Article 25(iii) of the tripartite agreement.

²⁸⁷Supra note 95.

²⁸⁸Interview with Ben over skype (21/09/2016).

²⁸⁹Supra note 132 at 291.

²⁹⁰Supra note 270...Saul Takahashi, ‘The UNHCR Handbook on Voluntary Repatriation’ at 605.

²⁹¹Kevin J Kelley, ‘Repatriation threatened after Dadaab returnees are blocked in Somalia’ (*Nation.co.ke*, 01/09/2016) <<http://www.nation.co.ke/news/Dadaab-returnees-blocked-in-Somalia/1056-3365890-et2pj9/index.html>> accessed 6 September 2016.

Refugees can provide insight on the conditions in the areas of return and the practical aspects that should be considered before repatriating refugees.²⁹²

Mohamed said:

The only thing that can ensure voluntary return is to consult with the refugees. I am sure there are refugees who are willing to return if they are consulted. I would recommend to the UNHCR, GOK and FGS to improve refugees' involvement in the process of repatriation as now [in Kenya] it's not involving.²⁹³

The UNHCR, COA and COO should consult with refugee men, women, youth and children separately to discuss the pre-conditions on repatriation and their integration upon return. The tripartite agreement provides that, 'the decision of the refugees to repatriate shall be based on...their relevant knowledge of the conditions with the country of origin and areas of return'.²⁹⁴ This way, the refugee will be informed and, influence the kind of conditions the COO will put in place before they go back home. In Guatemala, refugees were involved negotiating conditions for their return.²⁹⁵

3.3 Conditions when voluntary repatriation should take place

According to Abuya²⁹⁶ the critical question in voluntary repatriation is, 'when is it safe for refugees to return to their pre-persecution or pre-conflict home? When are conditions deemed sufficiently stable and durable for refugees to repatriate?' Neither the 1951 Refugee Convention nor the 1969

²⁹²Interview with Andrew in Westlands, Nairobi County (01/09/2016).

²⁹³Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

²⁹⁴Article 10 (2) of the tripartite agreement.

²⁹⁵Supra note 101 at 18 at para 101

²⁹⁶Supra note 11 at 156.

OAU Convention prescribe a criteria to adequately determine when voluntary repatriation should commence.²⁹⁷ The UNHCR Handbook provides that repatriation should only be promoted ‘when a careful assessment of the situation in the COO shows that the conditions of ‘safety and dignity’ can be met.’²⁹⁸ Safety and dignity entails return by refugees in and to conditions of physical, legal and material safety.²⁹⁹ Abuya writes that there are many difficulties associated with creating a benchmark by which one determines that it is safe and dignified to repatriate refugees.³⁰⁰ In recent discussions, UNHCR’s view is that, voluntary repatriation ‘can best take place after violence and intimidation are at the end, meaningful steps have been taken towards re-establishment of enforcement agencies that are compliant with human rights, as well as of an independent judiciary’.³⁰¹ This is not sufficient. I argue that security, basic services and livelihoods opportunities must be in place before commencing voluntary repatriation.

3.3.1 Special agreements: Tripartite agreement between UNHCR and GOK and FGS

One of the pre-conditions that must be in place before undertaking voluntary repatriation of refugees is, special agreements between UNHCR and countries involved.³⁰² In this study, a

²⁹⁷ Ibid.

²⁹⁸ UNHCR Handbook at Chapter 3.1.

²⁹⁹ UNHCR Paper on Voluntary Repatriation presented to the 4th Meeting of the Global Consultations on International Protection, 25 April 2002 EC/GC/02/5 (Global Consultations on International Protection) at para. 15.

³⁰⁰ Supra note 11 at 156.

³⁰¹ Global Consultations at paragraph 16.

³⁰² Article 8 (b) of the Statute of the UNHCR.

tripartite agreement between UNHCR and the GOK and FGS exists. One of the shortcomings of the tripartite agreement is that, Somali refugees were not involved in the drafting nor at the signing stage. In response to the question why Somali refugees were not involved in this process, Ben said:

It has never happened before. The usual procedure is that, it's between the countries involved and the UNHCR. It's not for refugees. This tripartite agreement is not exceptional. It's the same as all over the world.³⁰³

John said:

It's a states to states process. UNHCR negotiates on behalf of refugees. The tripartite agreement is a political process. In international politics you deal with States not individuals.³⁰⁴

The above comments indicate a traditional way of thinking which is out touch with the reality. The view that UNHCR represents the voices of the refugees should be revisited. My argument is that in order to guarantee full cooperation from the Somali refugees (camp and urban) in the voluntary repatriation process, UNHCR, GOK and FGS should have involved Somali refugees in the drafting and signing of the tripartite agreement. In contrast to the above comments by Ben and John, Mary said:

Refugees were absent in the drafting or signing of the tripartite agreement. The whole tripartite agreement was rushed. There should have been more consultation with the refugees (both urban and camp) before drafting the agreement. At the time of signature, it was a high level delegation composed of the UNHCR, GOK and FGS. Refugee representatives should have been present.

The tripartite agreement provides for the establishment of a tripartite commission.³⁰⁵ However, the composition of commission is limited to UNHCR, GOK and FGS representatives.³⁰⁶ In other words, it excludes refugees' participation. Furthermore, whenever appropriate, refugee

³⁰³Interview with Ben over skype (21/09/2016).

³⁰⁴Interview with John in Lavington, Nairobi County (09/09/2016).

³⁰⁵Article 3 of the tripartite agreement.

³⁰⁶Article 4 of the tripartite agreement.

representatives may only participate in the deliberations of the commission in ‘observer or advisory capacity. This is not sufficient. Given the role of the commission³⁰⁷, my argument is that since refugees are the main actors in the repatriation exercise, they should be included as members of the commission. This way, their views would be better represented in the deliberations of the commission.

In the absence of tripartite agreements, UNHCR may consider bilateral agreements or memoranda of understanding (MOU) with both the COO and the COA.³⁰⁸ For instance, in 2003, a MOU was concluded between UNHCR and the Angolan government.³⁰⁹ Increasingly peace agreements are becoming another source of legal authority for the basic repatriation framework.³¹⁰ For example, in 2005 Government of South Sudan and the Sudan’s People Liberation Movement (SPLM) signed the Comprehensive Peace Agreement to cease hostilities between the warring parties with a view of attaining peace in the country. Signing of peace agreements is a crucial step towards promoting the return of refugees.³¹¹ Where MOU, bilateral or peace agreements are used, refugees should be involved in the drafting and during signature.

3.3.2 Fundamental change of circumstances in the country of origin

³⁰⁷Article 5 of the tripartite agreement.

³⁰⁸Marjoleine Zieck, ‘Voluntary Repatriation’ at 38.

³⁰⁹ Kallu Kalumiya, ‘Angola: A Model Repatriation Programme?’ [2004] 23(3) Refugee Survey Quarterly 212. Also, the Memorandum of Understanding between the Government of the Republic of Liberia and the UNHCR for the voluntary repatriation and Reintegration of Liberian Refugees, 27 September 2004.

³¹⁰ Global Consultations on International Protection at para. 11.

³¹¹ Ibid.

Many refugees living in protracted situations in Africa, have fled their countries due to war or civil strife.³¹² Consequently, the second, pre-requisite that should be met before repatriation of Somali refugees (camp and urban) can take place is for the hostilities to have ended.³¹³ This is demonstrated by Mohamed:

I left Somalia because of fighting...before encouraging voluntary return, it is necessary to improve security situation in Somalia.³¹⁴

Two ways exist in which state parties to the 1951 Refugee Convention may be relieved of their responsibility to protect refugees. First, when a refugee voluntarily re-avails and re-establishes themselves in the COO and second, when there are fundamental changes in the COO.³¹⁵ In such circumstances, the COA may require that refugees to go back to their home state. This is because ‘refugee protection is conceived as protection for the duration of risk’.³¹⁶ In this case the refugee does not have a choice as assumed by George Homans.³¹⁷

The UNHCR defines ‘circumstances’ as, ‘fundamental changes in the country of origin, which can remove the basis of the fear of persecution’.³¹⁸ Hathaway, observes that fundamental changes in the country of origin ‘must be causally connected to the risk upon which refugee status was recognized’.³¹⁹ This means that the changes must be looked at in light of the particular cause of fear – that led to the refugee fleeing his country – in order to ensure that the situation which led to

³¹²Supra note 4 at 10.

³¹³ Supra note 11 at 156.

³¹⁴ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

³¹⁵ Articles 1C (1), (4), (5)-(6) of the 1951 Refugee Convention. Supra note 148 at 1.

³¹⁶ Supra note 11 at 127. Also, James Hathaway, ‘The Rights of States’ at 177.

³¹⁷Supra note 95.

³¹⁸ UNHCR Handbook at chapter 2.2.

³¹⁹James Hathaway, ‘The Rights of States’ at 186.

the recognition of the refugee status has ceased to exist. Changes that qualify as ‘fundamental’ more often involve an end to hostilities and a political change resulting in a return to peace and stability.³²⁰ While fundamental changes in a COO may at face value form a valid basis for the repatriation of refugees, the change itself may be insufficient to validate immediate return. Put differently, the mere cessation of hostilities is not reason enough to repatriate all refugees.³²¹ Some refugees may have compelling reasons of not wanting to return to their COO.³²² Fatuma expressed the following sentiments:

I am not willing to go back to Somalia because it is not safe for me to stay. I come from a minority group and discriminated to participate in political, social and economic activities.³²³

Interviews with urban Somali refugees revealed that they had reliable information on the existing conditions in the areas of return in Somalia from their relatives and friends. Abdi M said:

The security situation in Somalia has improved but still there are some challenges like killings and suicide bombers.³²⁴

One way of verifying whether there has been fundamental changes in conditions in the areas of return in Somalia would be through refugee participation in information sharing. In response to a question on how urban Somali refugees could be involved in the repatriation process, Andrew suggested that: refugees could complement information being provided at the helpdesks as they are better informed on the conditions back in Somalia.³²⁵ The joint information would then be disseminated to all refugees. The involvement of urban Somali refugees’ in provision of

³²⁰ Supra note 11 at 156-157.

³²¹ UNHCR Handbook at chapter 2.2.

³²² Ibid.

³²³ Interview with Fatuma in Eastleigh, Nairobi County (15/11/2015).

³²⁴ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

³²⁵ Interview with Andrew in Westlands, Nairobi County (01/09/2016).

information, would in turn contribute to the overall quality of information being shared. This is consistent with the tripartite agreement.³²⁶

The flipside of non-involvement of urban Somali refugees in the determining the minimum conditions of return is that, they are likely to go back in the face of continued human rights violations as conditions in Somali are not conducive.³²⁷ In the case of *Salah Sheekh v The Netherlands*³²⁸ the court examined whether an expulsion to ‘relatively safe’ areas in Somalia as deemed by the Government of Netherlands would be in violation of article 3 of the European Convention on Human Rights (ECHR) – equivalent to article 7 of the ICCPR. The court found out that the applicant’s expulsion to Somalia would be in violation of Article 3 as he was likely to be subjected to torture, degrading and inhumane treatment.³²⁹ It also noted that, the three most vulnerable groups in Somalia are said to be IDPs, minorities and returnees.

From the foregoing, at a minimum, basic safety must be guaranteed by the FGS for the urban Somali refugees to return to Somalia. In addition, urban Somali refugees can be involved in the decision making process by complementing information being provided at the help desks on conditions in Somalia. When refugees are aware of the existing conditions in their COO, they are able to make informed decisions on whether or not to repatriate.

³²⁶Article 10(2) of the tripartite agreement, ‘the decision of the refugees to repatriate shall be based on...and their relevant knowledge of the conditions within the COO and the areas of return.’

³²⁷ Relief web, ‘PSC Interview: Conditions in Somalia are ‘not conducive’ to the return of refugees from Dadaab’, <http://reliefweb.int/report/kenya/psc-interview-conditions-somalia-are-not-conducive-return-refugees-dadaab> (31 August 2015) accessed on 09/01/2016.

³²⁸*Salah Sheekh v The Netherlands ECtHR (Application No. 1984/04)*.

³²⁹*Ibid*, para 141.

3.3.3 Return in safety and with dignity

As mentioned earlier in this chapter, voluntary repatriation should only be promoted ‘when a careful assessment of the situation in the COO shows that the conditions of ‘safety and dignity’ can be met.’³³⁰ UNHCR defines, ‘safety and with dignity’ as ‘return in and to conditions of physical, legal and material safety’.³³¹ This is the third pre-requisite that UNHCR, GOK and FGS should consider before repatriating urban Somali refugees.

3.3.3.1 Physical safety

Includes possibilities of protection from armed attacks, and mine-free routes and if not mine-free then at least demarcated settlement sites.³³² According to McAdam and Saul, the right to life is directly linked and dependent on the physical environment.³³³ The landmark case of *Sufi and Elmi v the United Kingdom*³³⁴ underlines that the COO is not only responsible for creating conditions conducive for return but must also guarantee the physical safety of returnees. In this case, the ECHR considered the principle that, ‘persons will generally not be in need of asylum or subsidiary protection if they could obtain protection by moving elsewhere in their own country’.³³⁵ The Court unanimously held that a returnee with no recent experience of living in Somalia would be at real risk of being subjected to torture or to inhuman or degrading treatment or punishment contrary to article 3 of the ECHR (equivalent to article 7 of the ICCPR). The case underlines that the physical

³³⁰ UNHCR Handbook at Chapter 3.1.

³³¹ Global Consultations at para. 15.

³³² UNHCR Handbook chapter 2.4.

³³³ Jane McAdam and Ben Saul, An insecure climate for human security? Climate-induced displacement and international law. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 375.

³³⁴ *Sufi and Elmi v the United Kingdom* (2011) 1045 1 14.

³³⁵ *Ibid* para 35.

safety of returnees during and after repatriation is critical. Under the tripartite agreement, the FGS is responsible for ensuring ‘the safety and security of the returnees’.³³⁶

Majority of the interviewees said that they fled Somalia because of insecurity. Thus, security was an overriding priority in the decision of whether or not to return. Many of them were concerned about their physical safety in the areas of origin. Zeinab wondered:

How can the Somalia government ensure our safety if they cannot even secure the presidential palace and the prominent hotels visited by government officials?³³⁷

Fatuma expressed:

My main fear in the repatriation is that the problem that caused me to flee is still there. The government of Somalia cannot guarantee my safety.³³⁸

In order for the above concerns voiced by urban refugees to be taken into consideration by the UNHCR, GOK and FGS, urban refugees must be involved actively in the decision making process to repatriate. As suggested earlier in this chapter, refugees should be part and parcel of the tripartite commission. This way they can be able to voice the concerns of refugees at the highest level where decisions are taken. Also, urban Somali refugees should participate in the ‘go and see’ visits and ‘come and tell’ visits to their areas of return. The visits will enable them assess the security situation and lead to their informed decision of whether or not they want to return.

Linked to physical safety is the logistics of repatriating refugees. Abdi M, said:

If, we will be travelling back home by road, then children and women will have some challenges because roads are risky for children and women.³³⁹

³³⁶Article 25 (xvii) of the tripartite agreement.

³³⁷ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

³³⁸ Interview with Fatuma in Eastleigh, Nairobi County (15/11/2015).

³³⁹ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

My interviewees suggested that urban Somali refugees could be involved in decision making by providing useful information to the UNHCR, GOK and FGS on presence of landmines or explosive devices in the areas of return and the security of the roads to be used during their repatriation. This is consistent with the tripartite agreement.³⁴⁰ Furthermore, it would strengthen the information shared with Somali refugees.

3.3.3.2 Access to legal processes in the return areas

Before repatriating refugees, the COO with support from the UNHCR must draft legislations relating to ‘citizenship, property, documentation and return’³⁴¹ to enable returnees exercise their civil, political and economic rights.³⁴² Refugees’ should be consulted when drafting these laws and policies on repatriation and their views taken into consideration. According to Tom:

It is important to listen to the views of refugees so that their concerns are taken into consideration when developing policies concerning them.³⁴³

Housing, land and property restitution issues need to be addressed in the early stages of return. The FGS must establish fair and accessible procedures to settle any claims that a returnee may make for the successful recovery of their properties.³⁴⁴ Yusuf, commented:

People took property belonging to refugees, so if I go and claim back the property, I will be killed because I also come from a minority clan.”³⁴⁵

Zeinab was concerned that:

³⁴⁰ Article 18 of the tripartite agreement.

³⁴¹ Global Consultations on International Protection at para. 19.

³⁴² Kallu Kalumiya, ‘A Model Repatriation’ at 223.

³⁴³ Interview with Tom in City Centre, Nairobi County (09/09/2016).

³⁴⁴ Article 25 (xiii-ix) of the tripartite agreement.

³⁴⁵ Interview with Yusuf in Eastleigh, Nairobi County (22/11/2015).

Ownership of land is an issue for returnees, there might be fighting in the areas of return. Property issues will arise as there are no institutions to handle such cases.³⁴⁶

One way the FGS can achieve this is through the involvement of refugees in the housing, land and property discussions. UNHCR and FGS must ensure that returnees recover their homes, land and any other property that was lost while they were in exile. If not, returnees should be entitled to adequate compensation for any loss incurred.³⁴⁷ The right to return to one's own country is increasingly seen as closely linked with the right to adequate housing.³⁴⁸

Basic socio-economic rights³⁴⁹ such as right to clothing, food, housing, property, employment as well as civil and political rights³⁵⁰ (right to nationality, right to security of person, protection from torture) must be guaranteed to the returnees. This can rights only be exercised once the nationality of returnees is established and backed up with recognized documentation.³⁵¹ Refugees who are born in exile and are not registered at birth become 'invisible' to the official records. This affects the ability of the unregistered refugees to access their rights (right to return) on an equal basis as others who are registered. In extreme cases, such refugees face denial of nationality. In the Angolan repatriation, for example, verification of nationality was conducted. The voluntary repatriation form (VRF) was used as a temporary identity document in order to ensure that only Angolans were repatriated.³⁵² In the Somali repatriation, UNHCR, GOK and FGS must address the lack of basic identity documentations (birth certificates and national identification) for the Somali refugees

³⁴⁶ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

³⁴⁷ Article 25 (xiii) of the tripartite agreement. Also, Global Consultations on International Protection at para. 23.

³⁴⁸ Article 11 of the ICESCR.

³⁴⁹ Articles 10, 11, 12 and 13, of the ICESCR.

³⁵⁰ Articles 7, 9, 12, 16, 17, 19, 23 and 24 paragraph 3 of the ICCPR.

³⁵¹ Global Consultations on International Protection at paragraphs 21 and 22; "in the context of return, loss of nationality, unclear nationality status(for instance as regards foreign-born children of refugees) as well as changes in personal status through marriage, including with non-nationals of the country of origin, are the most common problems faced by returnees"

³⁵² Kallu Kalumiya, 'A Model Repatriation' at 218.

through issuance of practical identity documents. Findings from my interviews with urban Somali refugees born in Kenya showed that they were not willing to return. Thus, the GOK, FGS and UNHCR need to involve them in finding a solution for their plight.

Amnesty laws or public assurances of personal safety, which exempt returnees from punishment for having fled their country should be considered before commencement of voluntary repatriation.³⁵³ Somali refugees should be involved in the development of amnesty laws or the establishment of traditional dispute settlement mechanisms³⁵⁴ that will guarantee the safety of the returnees in the areas of origin. This is consistent with UNHCR which notes that, involving communities in this kind of mechanisms ‘may contribute to creating conditions conducive to voluntary repatriation and sustainable reintegration’.³⁵⁵ For example, in Rwanda, Gacaca traditional courts were established by the community as a means of trying those who had participated in the genocide.³⁵⁶ This court system ensured that the victims and the perpetrators continued to live together. Furthermore, it promoted communal harmony and reconciliation as the community members were involved in the process.

3.3.3.3 Availability and access to economic and social services in areas of return

In 2014, Somalia was ranked second among ‘failed states’ in the world, a position it held for six years.³⁵⁷ According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA, Somalia) statistics, 731,000 persons are in humanitarian emergency and crisis, 1.1

³⁵³Article 25 (ii) of the tripartite agreement. Also, Global Consultations on International Protection para. 20.

³⁵⁴Global Consultations on International Protection at para.19.

³⁵⁵ UNHCR, EXCOM Conclusion No.101 (LV) 2004.

³⁵⁶ Christine Venter, ‘Eliminating Fear Through Recreating Community in Rwanda: The Role of the Gacaca Courts’ [2009] 13 Texas Wesleyan Law Review 8.

³⁵⁷ J.J Messner, ‘Failed State Index 2014: Somalia Displaced as most-fragile State’,(published June 24, 2014).

million are IDPs whereas people in food security stress are 2.3 million.³⁵⁸ In other words, there is a real risk that those repatriating will lack livelihoods and food and, become IDPs in Somalia. Moreover, Somalia ranks 165 out of 171 countries in Human Development Index with 75 percent of the population living below two United States Dollars (USD) a day.³⁵⁹ Therefore, prior to repatriating refugees, UNHCR and the FGS must expand the existing basic services and livelihood opportunities in the areas of return.³⁶⁰ Return to areas where there is limited basic amenities is likely to result to conflict and tensions with the ‘stayees’.³⁶¹ Somali refugees should be involved by the UNHCR and FGS in identifying livelihood opportunities that match their skills and needs in the areas of return. In addition, refugees’ views on the basic services that should be in place before they return must be given consideration by UNHCR and the FGS. Zeinab suggested:

UNHCR and Somali government should establish schools and hospitals in the return areas and give cash to refugees so that they can sustain themselves. I do not want to go back to Somali because I am in school and there is no quality education in Somalia.³⁶²

At Dadaab camp, UNHCR is providing a cash grant of USD 150, counselling, transportation, hygiene kits, tools, food and other basic needs to the returnees.³⁶³ The repatriation package acts as an incentive for refugees to repatriate and a form of assistance to enable individuals meet some of the initial costs of re-establishing themselves.³⁶⁴ This is consistent with the UNHCR standards.³⁶⁵

³⁵⁸ UN OCHA- Humanitarian Bulletin Somalia April 2015/issued on 25th May 2015.

³⁵⁹ UN OCHA 2015 Humanitarian Needs Overview for Somalia November 2014.

³⁶⁰ Global Consultations on International Protection at para. 25

³⁶¹ Lisa Schlein, ‘Voluntary Repatriation of Somali Refugee Begins’, available at <http://www.voanews.com/content/voluntary-repatriation-of-somali-refugees-moving-ahead/2903925.html> (06 Aug 2015), accessed on 02/03/2016.

³⁶² Interview with Yusuf in Eastleigh, Nairobi County (22/11/2015).

³⁶³ UNHCR, ‘First Somali refugees in Kenya decide to return home as part of a new pilot project’, available at <http://www.unhcr.org/5485b6e56.html> accessed on 27/12/2015.

³⁶⁴ Supra note 126 at 16.

³⁶⁵ UNHCR, EXCOM Conclusion No. 18 (XXXI)-1980. Supra note 110 at 268, ‘In the Liberian repatriation from Ghana in 2009, UNHCR provided a cash grant of USD 100 to the returnees’.

However, the USD 150 cash grant being provided to the Somali returnees by UNHCR is insufficient. This is demonstrated by the words of Abdi M:

Economic and living expenses have increased. Previously, USD 100 was enough for small families now even USD 200 is not enough.³⁶⁶

In coming up with the repatriation package, UNHCR should consult with refugees. This is because refugees are better placed to know the reality on the ground. Thus, when reviewing the current cash grant being provided, UNHCR should involve Somali (camp and urban) refugees to ensure that a reasonable amount is mutually agreed on.

It is clear from the foregoing that refugees need to be included in determining the physical, material and legal conditions conducive for their return. Certain pre-conditions must be in place before Somali refugees go back. For instance, the views of urban refugees on establishing hospitals, schools and creating livelihood opportunities in the return areas, must be taken in consideration by the UNHCR, COO and COA.

3.3.4 Voluntary nature of Somali refugees' decision to return

For many refugees the immediate danger during repatriation comes from threats, pressure³⁶⁷ and attacks by the COA and, from the inadequate international assistance.³⁶⁸ Additionally, many host governments insist that repatriation is the only option. As stated in chapter two, voluntary repatriation can only take place when a refugee voluntarily expresses their wish to return.³⁶⁹In

³⁶⁶ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

³⁶⁷In both Tanzania and Ghana, the host governments and the UNHCR “encouraged” or coerced refugees to repatriate to their home states. See supra notes 78, 106 and 116.

³⁶⁸ Supra note 82 at 181.

³⁶⁹ Supra note 128 at 292, Article 5 (1) of the 1969 OAU Convention. Also, Conclusion Number 12 of the Cartagena Declaration on Refugees,

other words, the fourth pre-requisite suggests that a refugee cannot be repatriated unless they unequivocally express their wish to return.

The UNHCR defines ‘voluntariness’ as ‘implying an absence of any physical, psychological, or material pressure’.³⁷⁰ According to Bhatia, ‘voluntariness’ will be achieved through the removal of ‘push’ and ‘pull’ factors in the COA and in the COO respectively. Push and pull factors can interfere with a refugee’s objective assessment of whether or not the conditions are conducive for return.³⁷¹ Ayan, a female Somali refugee who recently moved from Dadaab camp to Eastleigh commented:

UNHCR reduced the food rations. Previously, they used to give us food twice in a month but nowadays it’s only once a month. There is also insecurity in the camps, the Kenyan police arrest people and accuse them of being terrorists.³⁷²

The above comment by Ayan shows that there was indeed, presence of physical, psychological and material pressure at the Dadaab camp from both the UNHCR and GOK. The reduction of food was likely to interfere with refugees’ decision of whether or not to repatriate. It also implies that refugees were not informed of the plan by UNHCR to reduce the food ratios. When planning to reduce the food ratios entitled to Somali refugees at Dadaab camp, UNHCR should involve them. The best way of doing this is through holding meetings with refugee and religious leaders as they have a measure of authority over the refugees. They will in turn inform the refugees who will have reliable information to inform their decision.

³⁷⁰UNHCR Handbook at chapter 3.1.

³⁷¹Supra note 138 at 794.

³⁷² Interview with Ayan in Eastleigh, Nairobi County (26/11/2015).

The voluntary nature of a refugees' decision to repatriate involves a refugee making a free and an informed choice. The tripartite agreement provides that, 'the decision of the refugees to repatriate shall be based on their freely expressed wish and their relevant knowledge...'³⁷³This is consistent with UNHCR standards.³⁷⁴ Informed choice is based on availability of complete, reliable, accurate and objective information on the conditions in the COO and areas of return.³⁷⁵The UNHCR, COO and COA are responsible for providing information on the conditions in the COO. Access to information will be discussed in the subsequent chapter.

3.5 Conclusion

It is obscure whether the UNHCR, COA and COO require all the above pre-requisites to be met in order to promote repatriation. Abuya writes that, 'it is difficult to identify with mathematical precision whether conditions in a refugees' state of origin have changed to promote return'.³⁷⁶UNHCR provides that, it 'should be convinced that the positive pull factors in the COO supersede the refugees' decision to repatriate as opposed to the negative push factors in the COA'.³⁷⁷In other words, conditions in the COO must have improved to enable a refugee decide whether to return. The foregoing, implying that refugees make calculated decisions based on a cost benefit analysis of the conditions in the COO with those in the COA. They will decide whether or not to repatriate based on the outcome with the highest value or benefit. In order to do the cost benefit analysis, Somali refugees need information about the COO (as they are already in the

³⁷³Article 10 (2) of the tripartite agreement.

³⁷⁴UNHCR, EXCOM Conclusion No. 40 (XXXVI)-1985.

³⁷⁵ Article 15 (1) of the tripartite agreement.

³⁷⁶Supra note 126 at 19.

³⁷⁷ UNHCR Handbook at chapter 2.3.

COA). The UNHCR, COO and COA must provide objective and accurate information to the Somali refugees to inform the decision of whether or not to repatriate.

Moreover, refugees can be used to complement the information being provided at the helpdesks by the UNHCR, COA and COO. Somali refugees communicate with their relatives and friends back in Somalia, who inform them about the existing conditions. Thus, strengthening information sharing between refugees, UNHCR, COA and COO. Another way in which refugees can be involved in establishing whether the conditions in Somalia are conducive is through ‘go and see’ visits. Somali refugees will be able to see for themselves which basic conditions are available on the ground and which are not and thus make an informed decision whether or not to return.

A framework that would ensure refugees are involved in the decision making process would also demand that a thorough assessment of the conditions in Somalia be conducted by the UNHCR, COO, COA and refugees. The assessment would identify the main challenges and opportunities for sustainable returns. It would also list the conditions as witnessed by the assessors without exaggerating. The assessment would highlight whether the safety and the rights of the returnees would be guaranteed if repatriated, whether education and health facilities are in place and that refugees can access basic services and livelihoods. If these pre-requisites are determined to be in place, UNHCR, COO and COA should then initiate voluntary repatriation. If not, the refugees, UNHCR, COA and COO should come up with practical steps that indicate when the conditions would be met. Only after the pre-conditions are met, should Somali refugees be repatriated.

CHAPTER 4

A REFUGEE'S RIGHT TO PARTICIPATE IN THE DECISION MAKING TO REPATRIATE

We (refugees) should be involved in the decision making process because the decision is about our lives. If there are no refugees, then there is no repatriation. We also need more information to be shared or disseminated by UNHCR and Governments of Kenya and Somalia. Currently, there are refugees who do not know about the voluntary repatriation or have accurate information to help them decide whether or not to repatriate.³⁷⁸

4.1 Introduction

Abdi's comment above, captures the importance of involving urban Somali refugees in the decision making process to repatriate. International law recognizes the participation of the people (including refugees) in public affairs.³⁷⁹ Similarly, courts in Kenya have upheld the right of participation in matters of public interest. In the case of *Peter Bogonko versus National Environmental Management Authority (NEMA)*³⁸⁰, the court held that, public interest involved far outweighed the individual rights of the applicant. In this case the public had not been accorded sufficient time to comment on the Environmental Impact Assessment report as required by section 59 (1) of the Environmental Management and Coordination Act (EMCA).

Failure to involve refugees in decision making processes is likely to result to a myriad of legal problems. First, it infringes on the refugees' right of participation, second, non-inclusion may contribute to the statelessness of some refugees and third, it may be construed as discrimination under international law. For instance, one of the reasons why the Eritrean and Ethiopian refugees

³⁷⁸ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

³⁷⁹ Article 25 (a) of the ICCPR. Also, article 13 of the African Charter on Human and Peoples Rights (ACHPRs).

³⁸⁰ *Peter Bogonko versus National Environmental Management Authority (NEMA) Miscellaneous Application No 1535 of 2005 eKLR*.

in Sudan, failed ‘to cooperate with the UNHCR in its attempt to make self-sufficient schemes, was their exclusion in decision making’.³⁸¹ The foregoing can be contrasted with the Guatemalan repatriation where refugees were directly involved in negotiating the conditions of return with their government.³⁸² Similarly, Mauritanian refugees actively played a role in the organization of their return from Senegal.³⁸³ The right to participate in decisions on matters that affect their (refugees) lives is an integral part of the UNHCR mandate.³⁸⁴

Chapter four looks at the extent to which inclusion of urban Somali refugees in the repatriation process will lead to their informed decision whether to return. How can urban Somali refugees be involved in the decision making process on repatriation? At what stage should they be involved? Will inclusion lead to their informed decision whether to return? This study acknowledges that, though, the majority of Somali refugees are found at the Dadaab camp, the discussions focus on urban Somali refugees. IOM and UNHCR conducted intention surveys for Somali refugees at the Dadaab camp but no consultations were held with urban refugees. According to John:

No consultations were held with urban Somali refugees. As it were, the three years (November 2013- November 2016) of voluntary return focused on Dadaab camp refugees. Our interest was in Dadaab refugee camp.³⁸⁵

In the wake of mass movements of refugees, an individual’s decision of whether or not to return to their COO has become less relevant.³⁸⁶ In most repatriations, the decision to return refugees to

³⁸¹Supra note 148 at 105 and 162.

³⁸²Supra note 101 at para. 101.

³⁸³Supra note 273 at 3.

³⁸⁴UNHCR Handbook at para 3.1.

³⁸⁵Interview with John in Lavington, Nairobi County (09/09/2016).

³⁸⁶ Supra note 191 at 10.

their home state is made by the COA, COO and the UNHCR to the exclusion of the refugees.³⁸⁷ Critics have argued that, ‘states concerns are given priority over those of refugees’³⁸⁸ since UNHCR ‘relies on donations and the goodwill of states’.³⁸⁹ Nonetheless, this study underscores that the implementation of the tripartite agreement between the UNHCR, GOK and FGS depends on the willingness of the Somali refugees to return home.³⁹⁰ Thus, the need for their inclusion in the decision making process.

Chapter four underlines that central to the inclusion of urban Somali refugees in the decision making process, is the need to adopt an age, gender and diversity approach.³⁹¹ As highlighted in the literature review, refugee women and those under their care form the bulk of the returnees, yet they are excluded in decision making.³⁹² George Homans assumes that individuals have a choice and thus, are able to make calculated decisions.³⁹³ In reality however, women and children are excluded in the decision making process. Thus, resulting to mischief or pain. My thesis will propose an all-encompassing approach that will ensure that the views of women and children are given equal weight as those of men.

This chapter also aims at emphasizing that refugees will only participate in the decision making process to repatriate, when provided with accurate and objective information about conditions back in the COO.³⁹⁴ Arrangements that ensure refugees have access to sources of information about their

³⁸⁷ Supra note 148 at 162.

³⁸⁸ Supra note 119 at 8-10.

³⁸⁹ Supra note 333 at 386.

³⁹⁰ Ibid.

³⁹¹ UNHCR EXCOM Conclusion 101 (LV) 2004.

³⁹² Supra note 82 at 176.

³⁹³ Supra note 95.

³⁹⁴ Supra note 155 at 1.

COO that they consider credible have been unsatisfactory.³⁹⁵ The tripartite agreement is silent on the modalities of information dissemination and sensitization to the Somali refugees. This research aims to fill this gap.

4.2 The process of decision making in voluntary repatriation

Ideally, voluntary repatriation should take place at the refugees' freely expressed wish.³⁹⁶ Practice however is that the UNHCR, COO and COA do not sit back and wait for the refugees to express a desire to return home.³⁹⁷ As soon as the conditions in the COO improve, they initiate the process of repatriating refugees. Special agreements [tripartite or bilateral] are signed by UNHCR, COA and COO.³⁹⁸ The agreements form the legal basis that govern voluntary repatriation of refugees. It thus follows that, the signatories [UNHCR, COA and COO] assume decision making in the drafting and creation of the agreements. Notably, refugees do not have much say during the negotiations or the drafting of these agreements.³⁹⁹ For instance, in the Mauritanian repatriation, the chairman of the refugee committee captured aptly their exclusion in drafting the agreement:

‘There should be four parties involved. The refugees should have some responsibilities. [Under this agreement] they are not responsible for anything...’⁴⁰⁰

³⁹⁵ Supra note 78 at 1291, ‘in the absence of information on local integration, many refugees interpreted this as a means of being completely abandoned in Ghana without assistance’. Also, supra note 128.

³⁹⁶ Article 5 (1) of the 1969 OAU Convention. Also; Article 10 (2) of the tripartite agreement.

³⁹⁷ Supra note 82 at 181. Evidence of pressure is common place.

³⁹⁸ Article 8(b) of the Statute of the UNHCR.

³⁹⁹ Supra note 151 at 612.

⁴⁰⁰ Supra note 273 at 3.

It's at drafting stage that refugees are initially excluded in matters that affect them. The signatories then sell the idea to the refugees who 'merely confirm and approve those decisions'.⁴⁰¹ They are not consulted.⁴⁰² They are simply informed that it is safe for them to return. The foregoing is no different for the Somali refugees. According to Mary:

The whole [tripartite agreement] process was rushed. There should have been more consultation with the refugees before drafting the tripartite. At the time of signing, only UNHCR, GOK and FGS representatives were present. Refugee representatives should have been involved in the signing of the tripartite.⁴⁰³

John said that repatriation was a states to states affair. Hence, the exclusion of refugees:

It's a states to states process. UNHCR negotiates on behalf of refugees. The tripartite agreement is a political process. In international politics you deal with States not individuals (refugees).⁴⁰⁴

As mentioned in chapter three, there is a need to revisit the view that UNHCR knows what is best for refugees and that they represent the voices of the refugees.⁴⁰⁵ Since the current tripartite agreement comes to an end in November 2016, I would suggest to the UNHCR, GOK and FGS to involve Somali refugees (camp and urban) in the drafting of a new agreement or in the negotiation of the extension of the current agreement. The views of the refugees should be given equal weight. This way, urban Somali refugees would have a choice in deciding whether or not they would like to repatriate.

⁴⁰¹Supra note 119 at 6. UNHCR and/or its partners carry out intention/return surveys aimed at assessing refugees' intention and readiness to return. Also, supra note 148 at 162.

⁴⁰²Supra note 128 at 293. Also supra note 106 at 56.

⁴⁰³Interview with Mary at City Centre, Nairobi County (02/09/2016).

⁴⁰⁴Interview with John in Lavington, Nairobi (09/09/2016)

⁴⁰⁵Supra note 148 at 163.

4.3 Somali refugees and decision making

During flight, refugees react rapidly. Most do not have much control in the decision making process. In sharp contrast, when deciding to repatriate, refugees do have ‘control over the timing and context of their return’.⁴⁰⁶ The fact that many refugees choose to return on their own is a reflection that they are their own decision makers on whether or not to repatriate.⁴⁰⁷ Usually, refugees do a cost benefit analysis on whether or not to repatriate based on comparison between their situation in exile and the conditions in the COO (based on information available to them).⁴⁰⁸ George Homans explains that in choosing between alternative actions an individual will choose that which the expected result is greater.⁴⁰⁹ Viewed from this perspective, it can be argued that refugees decide to repatriate if the expected result has greater benefit or advantage than the option of remaining in the COO. The foregoing brings into question the effectiveness (or otherwise) of the current decision making process which excludes refugees.

At the community level, refugee communities have a leadership body elected by the refugees to represent their views.⁴¹⁰ Sometimes refugee leaders do not represent the interests of the refugees. Thus, the need to involve other refugee members (camp or urban) in the decision making process. Generally, the leadership body acts as a bridge between the refugees and the UNHCR, and the host government respectively. The leaders have a say in the affairs of refugees.⁴¹¹ According to the

⁴⁰⁶Supra 93 at 32 and supra note 148 at 162.

⁴⁰⁷ For example, in spontaneous return of refugees.

⁴⁰⁸Supra note 82 at 174.

⁴⁰⁹Supra note 95.

⁴¹⁰ Kakuma News Reflector (KANERE), ‘Democracy and Refugee Participation in Decision-Making’ [2009] 1(4-5) Kakuma News Reflector 4.

⁴¹¹ Ibid.

rational choice theory individuals have a choice.⁴¹² Using the case study of urban Somali refugees, I argue that, not all refugees have a choice in deciding whether or not they want to repatriate. Hawa said:

Community leaders decide whether or not we have to return. Some refugees are doing it for money, they stay for a few months and then come back.⁴¹³

Zahra commented:

Local leaders are pressuring refugees to go back. They make decisions on behalf of the community and refugees' views are not represented.⁴¹⁴

In addition, the rational choice theory assume that women and children have a choice in deciding whether or not to they want to repatriate. This theory does not take into account the influence of 'significant others' – wives and husbands – in decision making process.⁴¹⁵ Indeed, not all persons who decide to repatriate or stay reach that decision by themselves.⁴¹⁶ Children are taken by parents whereas wives accompany their husbands. With regards to this study, it is well know that Somali society is patriarchal.⁴¹⁷ Due to cultural factors, men make decisions on behalf of the family. In other words, women and children are left without a choice but to follow what the head of the family decides. According to Fatuma:

If a woman decides to stay, whereas the husband wants to go back, it may result to a family dispute, separation or even divorce. In order to safeguard her family, the woman will agree to go back to Somalia with her husband.⁴¹⁸

⁴¹²Supra note 95 at 61.

⁴¹³ Interview with Hawa in Eastleigh, Nairobi County (23/11/2015).

⁴¹⁴ Interview with Zahra in Eastleigh, Nairobi County (15/11/2015).

⁴¹⁵Supra note 100.

⁴¹⁶Ibid.

⁴¹⁷Michael Van Notten, *The Law of the Somalis* at 27.

⁴¹⁸ Interview with Fatuma in Eastleigh, Nairobi County (15/11/2015).

In female headed households, the woman decides on behalf of the family. This is demonstrated in the words of Zaima:

Yes, if the household head is a woman, she will make the decision of whether or not to repatriate on behalf of the family.⁴¹⁹

The non-inclusion of women and children at household level decisions is not unique to the Somali society only. In her study, Nielsson writes that, in the Iraqi repatriation from Denmark, the decision to repatriate was made unilaterally by men without the involvement of women and children.⁴²⁰

The foregoing highlight the different levels of non-inclusion in the decision making process of urban Somali refugees: communal and household levels. International law provides for the right to participate in public life without discrimination.⁴²¹ According to the tripartite agreement, Somali refugees' representatives may participate in the deliberations of the tripartite commission in an observer or advisory capacity'.⁴²² This is not sufficient. Refugees should be part and parcel of the tripartite commission. At Dadaab camp, a technical committee comprising of refugees, UNHCR, NGOs, GOK and FGS representatives has been established.⁴²³ No similar approach has been adopted for the urban Somali refugees. In order to ensure that the views of urban Somali refugees are heard, a similar technical committee should be established.

⁴¹⁹Interview with Zaima in Eastleigh, Nairobi County (29/11/2015).

⁴²⁰ Supra note 143 at 10-12.

⁴²¹ Article 25 (a) of the ICCPR.

⁴²² Article 4(5) of the tripartite agreement.

⁴²³ Article 4(7) of the tripartite agreement.

Towards this, pragmatic steps must be taken by UNHCR, GOK and FGS to ensure that the voices of men, women⁴²⁴ and youth⁴²⁵ including children are represented in the technical committee. An age, gender and diversity approach⁴²⁶ should be adopted so that the views of all persons are represented. In addition, separate focused group discussions (FGDs) with urban Somali men, women, youth and children should be held. This way women, youth and children would be able to express themselves and be heard. Views from all persons must be given equal consideration.⁴²⁷

Hamdi expressed:

The UNHCR, GOK and FGS should consult young people like me to get our consent. We youth should have the right to express our feelings and views because it concerns our future.⁴²⁸

4.4 Why should the UNHCR, GOK and FGS involve urban Somali refugees in decision making?

In response to this question, I have highlighted three critical points that were raised by urban Somali refugees during my interviews. First, the decision to repatriate is about them—refugees. The rational choice theory assumes that refugees have a choice in deciding whether or not to repatriate.⁴²⁹ However, urban Somali refugees have been excluded from a [decision making] process that is largely about them. Mohamed said:

⁴²⁴ UN SC res. 1325(2000) (adopted at its 4213th meeting on 31 Oct.2008). Also Articles 9 and 10 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 Jul. 2003.

⁴²⁵ Articles 11 and 17 of the African Youth Charter, adopted 2 Jul.2006.

⁴²⁶ UNHCR EXCOM Conclusion 101 (LV) 2004.

⁴²⁷Supra note 11 at 164.

⁴²⁸ Interview with Hamdi in Eastleigh, Nairobi County (15/11/2015).

⁴²⁹Supra note 95.

No one consulted me. UNHCR and governments of Somalia and Kenya should involve us because it's us who are returning back home and the process is supposed to be voluntary. If we are not involved then I would say it is not voluntary repatriation.⁴³⁰

Yusuf commented:

It's me who came from Somalia. I should therefore make the decision of whether I want to go back or not.⁴³¹

As mentioned earlier in this thesis, courts in Kenya have reiterated public participation in matters that affect the public.⁴³² Similarly, international law recognizes the participation of the people (including refugees) in public affairs.⁴³³ UNHCR on its part seeks to:

'Consult with refugees to involve them in efforts to find a durable solution to their problems. Safeguard the refugees' desires, enhance their decision-making process and, through concerted confidence-building measures, enlist their active participation in assessing the feasibility and desirability of their eventual return home.'⁴³⁴

From the above, it's clear that refugees (camp and urban) ought to be involved in the decision making process to repatriate. The dilemma that exists is; at what stage should refugees be involved and to what extent? Long writes that refugees are excluded in the decision making process to repatriate because of two reasons. First, the assumption that the decision making process would involve refugee populations that are reluctant to return and second, who is felt would make 'unreasonable' demands on the UNHCR, COA and COO.⁴³⁵ This assumptions are outdated and out of touch with the reality. In Guatemala, for example, refugees were directly involved in

⁴³⁰ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

⁴³¹ Interview with Yusuf in Eastleigh, Nairobi County (22/11/2015).

⁴³² Supra note 87.

⁴³³ Article 25 (a) of the ICCPR. Also, 13 of the African Charter on Human and Peoples Right (ACHPRs).

⁴³⁴ UNHCR Handbook, chapter 3.1.

⁴³⁵ Supra note 101 at para. 100.

brokering the conditions of return with their government.⁴³⁶ It was also the same for Mauritanian refugees from Senegal.⁴³⁷ In my opinion, urban Somali refugees should be involved in all levels of the decision making process to repatriate (drafting, signing and the implementation stage).

Second, needless to say, urban Somali refugees are better placed to know the existing conditions back at home compared to UNHCR and the COA. Refugees are in touch with their relatives and friends back at home and are able to assess the situation in the areas of return based on the information they receive. According to the rational choice theory, individuals make rational choices after evaluating options available.⁴³⁸ In the words of George Homans, refugees make ‘rational’ choices on whether to return based on information received on conditions in the COO. They evaluate the information, compare it with the situation exile and then make the decision of whether to stay or go back home. Abdi M expressed:

I am in a position to know the situation in Somalia. I speak with my neighbors who tell me that there is no peace. Some refugees went back to Somalia and they came back due to conflict.⁴³⁹

Involvement of urban Somali refugees will positively contribute towards complementing the information provided by the UNHCR, GOK and FGS. Such complementarity will serve to reinforce the quality of information provided to the Somali refugees and thus inform their decision to repatriate.

⁴³⁶ Supra note 101 at para. 101.

⁴³⁷ Supra note 273 at 3.

⁴³⁸ Supra note 95.

⁴³⁹ Interview with Abdi in Eastleigh, Nairobi County (22/11/2015).

Third, UNHCR, GOK and FGS need to involve urban Somali refugees in decision making so that they are informed of refugees' plans for their own return. This would help in developing an inclusive and comprehensive plan for the voluntary return of Somali refugees. Furthermore, UNHCR, GOK and FGS would gain a deeper understanding of the issues that refugees consider before deciding to repatriate. Abdi M said:

I don't want to be a refugee forever. If the security and economic conditions in Somalia improve, I will go back.⁴⁴⁰

In summary, failure to involve urban Somali refugees in the decision making process will result to infringement of their rights. The preamble of 1969 OAU Convention underlines that human beings – including refugees – ‘shall enjoy fundamental rights and freedoms without discrimination.’⁴⁴¹ For instance, non-inclusion may be interpreted as a threat to the non-discrimination principle. In upholding this principle, a state must treat a foreigner – including refugees – no worse than it treats its own nationals.⁴⁴² Critics may argue that UNHCR – as the mandated body to protect refugees – does indeed represent the voices of refugees in the decision making process.⁴⁴³ However, I argue that UNHCR cannot ‘necessarily be regarded as an objective actor’⁴⁴⁴ in the decision making process. Often, UNHCR is under pressure from the COA or COO to fast track the repatriation of refugees sometimes to less than ideal circumstances. Interviewees from the UNHCR and GOK mentioned that there was a lot of pressure from the GOK to UNHCR to repatriate Somali refugees.

⁴⁴⁰ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

⁴⁴¹ Preamble para.6, 1969 OAU Convention.

⁴⁴² Craig Forcese, A distinction with a legal difference: the consequences of non-citizenship in the ‘war on terror’ in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens* (Cambridge University Press 2010) 426-427.

⁴⁴³ Saul Takahashi, ‘The UNHCR Handbook on Voluntary Repatriation’ at 596. Also, supra note 128 at 292.

⁴⁴⁴ Supra note 101 para 23. Also, supra note 128 at 292.

4.5 Participation in decision making

In order to solve refugee problems, states have to address the root causes of refugee flight.⁴⁴⁵ One of the ways recommended by Emmanuel is ‘participation in decision making’.⁴⁴⁶ The ICCPR provides for the right to participate in public life without discrimination.⁴⁴⁷ Further support for participation in public life can be found in the Kenyan Constitution. Article 174 (c) recognizes the value of people – nationals and refugees alike – in enhancing ‘participation in the exercise of the powers of the State and in making decisions affecting them.’⁴⁴⁸ Emphasis is placed on making sure that refugees take part in decisions affecting them.⁴⁴⁹ The critical question in the decision making process to repatriate is: how can refugees be included in the process? My thesis, through a case study of urban Somali refugees, identified three ways in which refugees can participate in the decision making process. I have discussed them in the following sections.

4.5.1 Access to information on conditions in the areas of return

International law recognize the right of individuals to information. The ICCPR indicates that all persons are entitled to ‘seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’⁴⁵⁰ The 1969 OAU Convention says surprisingly little about information. Article 5 (4) puts it this way:

⁴⁴⁵ Supra note 11 at 163.

⁴⁴⁶ Emmanuel Opoku Awuku, ‘Refugee Movements in Africa and the OAU Convention on Refugees’[1995] 39 (1) *Journal of African Law* 9.

⁴⁴⁷ Article 25 (a) of the ICCPR.

⁴⁴⁸ Article 174 (c) of the Constitution of Kenya (2010).

⁴⁴⁹ UNHCR Handbook chapter 4.1.

⁴⁵⁰ Article 19(2) of the ICCPR.

‘an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.’⁴⁵¹

The UNHCR Executive Committee, in 1980, recognised ‘the importance of providing refugees with all the necessary information on the situation in their country of origin to facilitate their decision to repatriate.’⁴⁵² Article 35 (3) of the Constitution of Kenya obligates Kenya as the host state to ‘publish and publicise any important information affecting the nation.’⁴⁵³ However, it is less detailed on the modalities of accessing the information. Consequently, arrangements that ensure urban Somali refugees have access to information on voluntary repatriation as well as on conditions in Somalia have been unsatisfactory.

My literature review identified that refugees actively search for information about their COO in order to repatriate.⁴⁵⁴ Information on conditions in the COO is majorly obtained by refugees from non-formal sources (friends, relatives, other refugees or returnees).⁴⁵⁵ In other words, information obtained from formal sources (UNHCR, COO and COA) is either not accessible, irrelevant or considered as unreliable. This is a gap. Zeinab said:

The Government of Somalia tells UNHCR that it’s safe in Somalia, but the reality is that there is conflict. I rely on the information received from my relatives.⁴⁵⁶

⁴⁵¹ Article 5(4) of the 1969 OAU Convention.

⁴⁵² UNHCR, EXCOM Conclusion No.18 (XXXI)- 1980.

⁴⁵³ Article 35 (3) of the Constitution of Kenya.

⁴⁵⁴ Supra note 159 at 19. Also supra note 93 at 33.

⁴⁵⁵ Supra note 159 at 19, supra note 155 at 2-11 and supra note 93 at 33.

⁴⁵⁶ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

With regards to this study, the tripartite agreement obligates the UNHCR, GOK and FGS to provide timely, objective and accurate information on the current conditions in the COO to the refugees.⁴⁵⁷ Sadly and unfortunately, this has not happened for the urban Somali refugees. Abdi M commented:

We need more information. Currently, there are a lot of refugees who do not know about voluntary return to Somalia nor do they have credible information to help them decide whether to return or not.⁴⁵⁸

In order to strengthen information provided by the formal sources, urban Somali refugees must be involved. One way of doing this is by setting up help desks in urban areas where refugees provide information to complement information obtained from formal sources. Refugees would verify information provided at help desks with that obtained from informal sources. This would in turn enhance the reliability of information provided by the UNHCR, GOK and FGS. In addition, urban Somali refugees would have access to reliable information which would enable them decide whether or not to return.

Another gap identified by my literature review was that, there was no coordinated or uniform way of channeling information [on the conditions in the COO] so that refugees could access it. Indeed, urban Somali refugees, UNHCR, GOK and FGS all have relevant information about the conditions in Somalia. However, in the absence of a well-coordinated way of collecting and sharing information, it's difficult for urban Somali refugees to access accurate and reliable information about the conditions in the areas of return. In order to ensure that urban Somali refugees have

⁴⁵⁷ Article 15 (1) of the tripartite agreement.

⁴⁵⁸ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

access to accurate and reliable information on the areas of return, information sharing between urban Somali refugees and UNHCR, GOK and FGS should be strengthened. As mentioned earlier, help desks should be set up in Nairobi to collect and provide information. They should be set up in areas which are accessible to the refugees. Refugees could also be used to disseminate the joint information. In Uganda, for instance, Rwandese refugees would spread information obtained about Rwanda throughout the camp to keep everyone informed.⁴⁵⁹

Not surprising perhaps, is that data collected from my interviewees showed that they were not aware of the planned voluntary repatriation. This is demonstrated by the words of Yusuf:

I heard a rumor in the estate. People were saying that there is a plan to return all refugees to Somalia, but I thought it was lies. I am not sure whether or not it's true as I do not have accurate information on the voluntary repatriation.⁴⁶⁰

The information vacuum is heightened by the gaps in the tripartite agreement.⁴⁶¹ For instance, the tripartite agreement does not specify what kind of information should be shared by each actor, how the information should be shared with the refugees, the format in which the information would be disseminated, the language to be used (English, Swahili or Somali), the frequency of information dissemination, and how and where refugees (including the vulnerable persons) would access this information.

In order to reduce the gaps and ensure that urban Somali refugees receive information on the voluntary repatriation, UNHCR, GOK and FGS must organize and carry out joint public awareness campaigns and information dissemination in all areas where refugees are living. This can be achieved

⁴⁵⁹Supra note 159 at 19.

⁴⁶⁰ Interview with Yusuf in Eastleigh, Nairobi County (17/11/2015).

⁴⁶¹Article 15 (1) of the tripartite agreement.

by conducting announcements via mega phones, holding public rallies and forums, holding talks on local radio shows where urban Somali refugees can call in and where possible door to door awareness campaigns. In order to ensure that the message is well understood, Somali language should be used.

According to Koser, refugees evaluate information about conditions in the COO on the basis of three characteristics: ‘reliability, accuracy and content’.⁴⁶² As mentioned earlier, reliability of information is dependent on the source. Information obtained through informal sources is considered reliable compared to that from official sources. My interviewees said that they mostly relied on information obtained from relatives and friends in the decision whether to repatriate. Moreover, urban Somali refugees do not rely on one source of information but on several. Fatuma said: I communicate with my family and friends who are back in Somalia. I also watch Somali news.⁴⁶³ Koser argues that the accuracy of information about the COO depends on high frequency of information receipt.⁴⁶⁴ In other words, up to date information means that the refugee keeps abreast of the changes in the COO. Koser explains content in terms of relevance of the information.⁴⁶⁵ Majority of the urban Somali refugees interviewed said that they fled Somalia because of insecurity. Not surprising, security was an overriding priority in the decision of whether to return. Mohamed said:

Security and political stability are the two most important factors affecting our decisions on whether or not to go back, and for now both of them have not improved yet.⁴⁶⁶

⁴⁶²Supra note 155 at 9.

⁴⁶³ Interview with Fatuma in Eastleigh, Nairobi County (15/11/2015).

⁴⁶⁴Supra note 155 at 10.

⁴⁶⁵Supra note 155 at 11.

⁴⁶⁶ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

Prior to repatriation, refugees must be informed what to expect in their areas of return. They must be informed of what the COO, UNHCR and NGOs can and cannot provide. If this is not communicated properly, refugees will repatriate worse off than they were in the COA. This in turn will challenge the sustainability of the returns. UNHCR is obligated to provide information about the conditions of return, including the level of security, access to food, water, housing, health care, education and livelihood opportunities, choice of repatriation method, procedure for reclaiming their property and ‘information on assistance that refugees cannot expect.’⁴⁶⁷ In a research conducted on the repatriation of Iraqi refugees from Denmark in 2008, ‘insufficient information about the country of origin’ prior to repatriation contributed to refugees deciding not to repatriate.⁴⁶⁸ Specifically, Iraqi refugees pointed out that they did not receive adequate information regarding the security situation in Iraq.

The foregoing imply that, in strengthening information sharing among refugees, UNHCR, GOK and FGS, three factors are critical and should be considered: accuracy, reliability and relevance of information. This way refugees will be able to make informed decision.

4.5.2 Go and see visits

In 1980, the Executive Committee recognised that individual refugees should be able to visit their COO to ‘inform’ themselves of the situation in the areas of return.⁴⁶⁹ The visit is supposed to enable a refugee make a decision on whether or not to return based on what they see. Accordingly, go and

⁴⁶⁷ UNHCR Handbook, chapters 3.3 and 4.2.

⁴⁶⁸ Supra note 143 at 8.

⁴⁶⁹ UNHCR, EXCOM Conclusion No.18 (XXXI)- 1980.

see visits increase refugees' ability to evaluate the positive and negative factors in the COA with those in the COO.⁴⁷⁰ According to the rational choice theory, 'in choosing between alternative actions, a person will choose the one which the value of the output is expected to be greater.'⁴⁷¹ Thus, a refugee will decide to repatriate based on what they see. If they observe that the conditions in the areas of return will contribute to their happiness or benefit they will repatriate. However, if what they see diminishes their happiness then they will not agree to repatriate. Thus, the decision of the refugee on whether or not to go back home will be informed. The story of Noah and the flood, in the Bible, captures the importance of go and see visits:

After 40 days Noah opened a window and sent out a raven. It did not come back, but kept flying around until the water was completely gone. Meanwhile, Noah sent out a dove to see if the water had gone down, but since the water still covered all the land, the dove did not find a place to alight. It flew back to the boat, and Noah reached out and took it in. He waited another seven days and sent it out the dove again. It returned to him in the evening with a fresh olive leaf in its beak. Noah knew that the water had gone down. Then he waited for another seven days and sent out the dove once more; this time it did not come back.⁴⁷²

The quote above demonstrates that go and see visits are organized so that refugees or IDPs can see for themselves the conditions in the areas of return. After the visit, refugees and IDPs are 'expected to share their impressions with the other refugees or displaced people'.⁴⁷³ The information will inform their decision on whether or not to repatriate. Information shared is on general issues such as, 'security situation, infrastructure and livelihoods opportunities'.⁴⁷⁴ The UNHCR has organized many go and see visits in Africa. For instance, in 2005, South Sudanese refugees from Kakuma

⁴⁷⁰Supra note 100 at 54.

⁴⁷¹Supra note 95.

⁴⁷²The Good News Bible, the book of Genesis, chapter 8 verse 6-11.

⁴⁷³UNHCR, 'UNHCR organizes go-and-see visits for displaced Kenyans', available at <http://www.unhcr.org/4821daa24.html> (07 May 2008) accessed on 08/04/2016.

⁴⁷⁴Ibid.

camp went to visit their areas of origin.⁴⁷⁵ In each case, refugees met with the local authorities and were given a tour of their towns. Upon return from the visit, the refugees shared with the other refugees of their findings in the areas of return. In Kenya, after the 2007 post-election violence⁴⁷⁶, UNHCR organized a go and see visit to Nyakinyua and Timboroa in Nakuru County for 30 IDPs.⁴⁷⁷ The IDPs had fled from these areas after inter-ethnic violence broke out in 2007. International Organization for Migration financed the visit to and from the towns. During the go and see visit, the neighbors from the rival ethnic group welcomed the IDPs – some of whom had turned on them when violence erupted.⁴⁷⁸ Even so, majority of the IDPs ‘were shocked to see the devastation wreaked on their property.’⁴⁷⁹ As a consequence of the go and see visit, the IDPs were undecided on whether or not to return permanently. Ann Waithera, an IDP who after walking through the ashes of what was left of her family house and garden, expressed:

‘What are we going to do here when we come back? There is nothing left. Our land is very fertile but we are surrounded by aggressors.’⁴⁸⁰

Although, the tripartite agreement provides that UNHCR, GOK and FGS shall facilitate ‘go and see’ visits by refugees⁴⁸¹, it is silent on how such information obtained from the visit will be shared with remaining refugees. For instance, Bram Jansen’s⁴⁸² study on repatriation of South Sudanese refugees from Kakuma camp to South Sudan in 2011, revealed UNHCR’s control of the ‘go and

⁴⁷⁵AllAfrica, ‘Refugee Go and See Visits, Dinkas on the Move’, available at <http://allafrica.com/stories/200511291434.html> (29/Nov/2005), accessed on 03/04/2016.

⁴⁷⁶Supra note 11 at 164, the post-election violence created ‘some 500,000 internally displaced persons and 12,000 refugees’.

⁴⁷⁷UNHCR, ‘UNHCR organizes go-and-see visits for displaced Kenyans’, available at <http://www.unhcr.org/4821daa24.html>(07 May 2008) accessed on 08/04/2016.

⁴⁷⁸Ibid.

⁴⁷⁹Ibid.

⁴⁸⁰Ibid.

⁴⁸¹Article 15 (2) of the Tripartite agreement.

⁴⁸² Supra note 101 para 103.

see' visits. A local leader was 'warned by UNHCR not to make any public comments about his trip until some days later... after the team had met and agreed upon a common statement'.⁴⁸³ In other words, the information shared by those who participated in the go and see was biased. There is a high likelihood that the common statement was partial and unreliable to enable a refugee make an informed decision. To remedy control of information by UNHCR, guidelines on information sharing and dissemination must be agreed upon by UNHCR, GOK, FGS and the refugees prior to 'go and see' visits. The actors must agree on what information participants can or cannot share, what UNHCR, GOK and FGS can or cannot share. Information shared should not be biased.

Generally, only leaders of the refugees participate in the 'go and see' visits. In order to guarantee that the visits are all inclusive, UNHCR must ensure that women, children and youth are given equal opportunity as men. In addition, refugees from minority clans should also be considered on an equal basis as those from major clans. The tripartite agreement does not provide for the selection criteria of those who take part in the go and see visits. Such a selection criteria will factor in the age, gender and diversity of those undertaking the go and see visits. The views of women and children during and after this visits must be given equal weight as those of men.

The tripartite agreement is also silent on who will finance the go and see visits. UNHCR, COO and COA must also agree on who will finance the go and see visits. I would recommend that each actor contributes financially or materially to the go and see visits.

4.6 Timing of return

⁴⁸³Ibid.

When making the decision of whether or not to repatriate, ‘the timing of return is an essential element’⁴⁸⁴that refugees consider. As mentioned in chapter two, ‘home’ can evolve during exile. The COO can undergo significant changes while refugees are in exile to the extent that, at the time of repatriation, refugees return to a place very different from where they had originally fled from.⁴⁸⁵ For instance, Omata observes that after so many years in exile, ‘many Liberian refugees in Ghana were not prepared to go back to the precarious political and economic situation in Liberia’.⁴⁸⁶

If the tripartite agreement is anything to go by, all Somali refugees in Kenya should have repatriated by November 2016. However, majority of the urban Somali refugees interviewed expressed that the timing was not conducive for any kind of returns (voluntary or spontaneous) – given the security situation in Somalia. They felt left out with regards to the decision on the timing of the return. Zeinab expressed:

The repatriation is not appropriate at this time. Refugees should be allowed to take their time until they find it appropriate to go back home.⁴⁸⁷

In addition, urban Somali refugees were worried that they would return back home in the face of continued protection risks. Abdi M said:

When refugees are not involved in deciding when they want to return, they are likely to go back to Somalia where there is greater risks for their lives or they will go to other countries in Europe.⁴⁸⁸

⁴⁸⁴Supra note 78 at 1292.

⁴⁸⁵Supra note 119 at 12.

⁴⁸⁶Supra note 78 at 1284.

⁴⁸⁷ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

⁴⁸⁸ Interview with Abdi M in Eastleigh, Nairobi County (17/11/2015).

As mentioned in chapter three, the conditions in Somalia are not conducive for the voluntary repatriation of refugees. Amnesty International⁴⁸⁹ reported that the human rights situation in Somalia was precarious. Civilians were at risk of ‘grave human rights abuses’ such as, ‘indiscriminate and targeted violence, including rape and killings’ by parties to the conflict.⁴⁹⁰ This was confirmed by Mary:

There is a co-relation between increased protection risks (child recruitment and gender based violations) in Somalia and the returns of Somali refugees from Kenya. There is data that returnees are facing human rights violations once they are in Somalia.⁴⁹¹

The above does not mean that refugees have a right to stay in the host state indefinitely.⁴⁹² ‘If return movement is a social product depending on different factors, people who are not willing to return at one point may decide to do so at another point’.⁴⁹³ For example, most of the Somali youths interviewed were studying⁴⁹⁴ in the Kenyan universities and colleges and felt that the timing of the voluntary repatriation would affect their studies. Despite that, most of them expressed a desire to go back home once they had completed their studies. Zeinab said:

I do not want to go back to Somalia at the moment because I am in school. After my studies, I can go back and take part in peace building efforts.⁴⁹⁵

Mohamed commented:

⁴⁸⁹ Amnesty International, No place like home: Returns and relocations of Somalia’s Displaced, 8-9. Also, briefing of the Amnesty International, Forced returns to South Central Somalia, including Al Shabaab areas: A blatant violation of international law, (23 October 2014)AFR 52/005/2014.

⁴⁹⁰ Ibid.

⁴⁹¹ Interview with Mary in City Centre, Nairobi County (02/09/2016).

⁴⁹² Supra note 128 at 293.

⁴⁹³ Supra note 78 at 1292.

⁴⁹⁴ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015); Interview with Hamdi in Eastleigh, Nairobi County (15/11/2015) and interview with Halima in Eastleigh, Nairobi County (17/11/2015).

⁴⁹⁵ Interview with Zeinab in Eastleigh, Nairobi County (15/11/2015).

For now I am not willing to return but in the future I wish there will be improved security to live in safety and respect.⁴⁹⁶

From the foregoing discussions, a gap exists with regards to the involvement of urban Somali refugees in the decision making process to repatriate. UNHCR, GOK and FGS should involve refugees when drafting the tripartite agreement so that they can express their views with regards to the timing of their return. Since the current tripartite agreement is coming to an end in November 2016, UNHCR, GOK and FGS must ensure that they involve refugees when drafting a new one or when reviewing the current one for extension.

At Dadaab camp, exemptions were given to children and students in colleges. I would suggest to the UNHCR and GOK to give an opportunity to urban Somali children who are doing their national exams this year, to complete. Children in other classes, should be transferred to schools in Somalia at the same school level study they were in Kenya. In addition, the GOK and UNHCR need to develop a repatriation plan together with the urban Somali youths who are in the universities or colleges to agree on the timelines for them to complete their studies. Andrew recommended:

The timing of the return is appropriate but it should be in a phased manner. First, with Somali refugees want to return and then gradually with the rest.

4.7 Conclusion

⁴⁹⁶ Interview with Mohamed in Eastleigh, Nairobi County (19/11/2015).

According to Zieck, a ‘proactive approach where refugees are considered part of the solution’⁴⁹⁷ should be adopted by UNHCR, COO and COA. Such an approach would ensure that urban Somali refugees have access to information that enables them participate in the decision making process. According to the urban Somali refugees interviewed, conditions in Somalia featured highly in their decision whether to return. Thus, provision of accurate, reliable and relevant information about Somalia would lead to their informed decision to return. Other than access to information, urban Somali refugees can take part in the go and see visits in areas or return. This would inform their decision of whether or not to repatriate based on what they see. Urban Somali refugees or their leaders should also take part in the drafting of strategic documents affecting them.

Ways in which urban Somali refugees can access information which be strengthened. For instance, house to house visit by UNHCR staff, targeting particularly, the blind, deaf, disabled, and sickly as well as other vulnerable persons should be conducted. UNHCR should not wait for the vulnerable people to come to their offices to access the information. Radio talk shows where urban Somali refugees can call in. Visual and oral methods of information dissemination should be given preference over written forms due to the Somali culture of being an ‘oral’ society. Local language (Somali) should be used in sharing and disseminating information. Help centres should also be set up in various places where refugees can access easily for information.

⁴⁹⁷ Marjoleine Zieck, ‘Voluntary Repatriation’ at 37.

In order to ensure an age, gender diversity approach, women, men, youth and children should be included or their views represented in the ‘go and see’ visits and repatriation decision making process respectively. All views must be given equal weight.⁴⁹⁸

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This research set out to answer two questions: whether the inclusion of urban Somali refugees in the decision making process to repatriate would lead to their informed decision of whether or not to return and secondly, to identify ways in which urban Somali refugees could be involved in the decision making process to return. The decision of whether or not to repatriate is a complex one and though, only refugees’ can exercise the right to return, they have been excluded from the decision making process.

5.1 Conclusions

In answering the first question, the researcher through interviewing urban Somali refugees, UNHCR, NGO and GOK officials found out that indeed, the inclusion of urban Somali refugees in the decision making process to repatriate would contribute to their informed choice of whether or not to return. This is in line with the rational choice theory which assumes that individuals make rational decisions.⁴⁹⁹View from this perspective, urban Somali refugees were likely to make informed decisions on whether or not to return once they were involved in the repatriation process.

⁴⁹⁸Supra note 11 at 164.

⁴⁹⁹Supra note 95 at 54-61.

The current decision making process composed of UNHCR, COO and COA sidelines Somali refugees. Further, women and children have been sidelined in the decision making process as the decision is unilaterally made by men. Somali society is well known to a patriarchal. Others who have been excluded in the decision making process include, refugees born in Kenya, those in schools and colleges, those who do not wish to repatriate. Inclusion of women and children, second or third generation refugees, the deaf and the blind, the elderly and those who do not wish to repatriate in the decision making process, will lead to their informed decision.

International law is predisposed towards the inclusion of refugees in decision making process. The ICCPR and the ACPHRs provide for the right to access information. The courts in Kenya have also reiterated right to information and participation in matters of public interest. Urban Somali refugees will be able to participate in decision making if they have access to information on voluntary repatriation.

To adequately address the exclusion of urban Somali refugees in the decision making process, attention must be given to how refugees access information on voluntary repatriation. Although, the tripartite agreement provides that the UNHCR, GOK and FGS shall provide information to refugees (on the conditions in Somalia) to inform their decision to return, modalities of how the information will be shared and disseminated to the refugees is wanting. In addition, before undertaking any voluntary repatriation of refugees, UNHCR, GOK and FGS must ensure that the

conditions in Somalia are conducive for the return of voluntary.⁵⁰⁰ A joint assessment by UNHCR, GOK, FGS and refugees must be undertaken prior to promotion of voluntary repatriation. Minimum basic standards of what should be in place before repatriation should be developed and agreed upon by the refugees, UNHCR and COO. According to my interviewees, the basic conditions include, availability of livelihoods, health services, schools, access to land, security and respect for human rights.

In answering the second question, the researcher identified several ways through which urban Somali refugees could be involved in the decision making process. The current decision making process is composed of the UNHCR, GOK and FGS.⁵⁰¹ Bradley writes that, ‘the fact that the refugees are the ones repatriating and have not be involved on the decision of whether or not to repatriate calls for their inclusion’.⁵⁰² Refugees are the main decision makers during flight and should therefore be seen as decision makers in the decision making process to repatriate. This is in line with the rational choice theory which assume individuals have choices and are able to make considered decisions. In making an informed decision of whether or not to repatriate, refugees require information on the existing conditions in the COO.

The UNHCR, GOK and FGS are obligated to provide accurate and objective information to the Somali refugees on the existing conditions in Somalia.⁵⁰³ Thus, one of the ways in which urban Somali refugees can be involved in the decision making process is through access to information

⁵⁰⁰ Article 5 of the OAU Convention.

⁵⁰¹ Article 4 of the tripartite agreement.

⁵⁰² Supra note 128 at 290.

⁵⁰³ Article 15 (1) of the tripartite agreement.

on the conditions in Somalia. Through the establishment of helpdesks by GOK and UNHCR in Nairobi, urban Somali refugees can access information about Somalia. Refugees can also provide and receive information about Somalia at these helpdesks. In addition, they can verify the information being provided at the helpdesks. UNHCR and GOK can provide information to the urban Somali refugees through local radio shows, where refugees can call in, hold public meetings where refugees can participate, conducting focus group discussions with women, children, youth and men separately and through translated leaflets and brochures.

Other ways in which urban Somali refugees can be involved in the decision making process include; participating in the drafting and signing of the tripartite agreements, taking part in assessments in the COO, negotiating for basic conditions to be in place in the COO before repatriation, membership to the tripartite commission and technical committee on voluntary repatriation. The UNHCR, GOK and FGS must also organize ‘go and see’ visits to Somalia for the urban refugees to enable them travel to the areas of return. This way they will be able to see the conditions in Somalia and make the decision of whether or not to repatriate based on what they see. The visits are provided for in the tripartite agreement.⁵⁰⁴ Urban Somali refugees should also be involved by the UNHCR, FGS and GOK when developing repatriation package entitled to refugees. This way, a reasonable amount that can sustain refugees for the first three months can be agreed upon. In all these activities, an age, gender and diversity approach must be used and the views of women and children given equal weight as those of men.

⁵⁰⁴Article 15 (2) of the tripartite agreement.

5.2 Recommendations

5.2.1 Strengthen the information sharing among urban Somali refugees, UNHCR, GOK and FGS

Information is power. In order to make a free, voluntary and well informed decision with regards to their return process, urban Somali refugees must have access to accurate, reliable, timely and objective information about the conditions in their COO. From my interviews, more than 90% interviewees (23 out of 25) suggested that urban Somali refugees should be educated or informed about the repatriation process. Specifically, urban Somali refugees require information about the existing conditions in the areas of return. Under the tripartite agreement, the UNHCR, GOK and FGS are expected to make information on repatriation available to refugees.⁵⁰⁵ Consequently, information flow (gathering, dissemination, access and reception) among the UNHCR, refugees, GOK and FGS ought to be strengthened. Interviewees from the UNHCR, NGOs and GOK said that return helpdesks were being set up in Nairobi to serve as sources of information for urban Somali refugees. I would recommend to the UNHCR and GOK to involve urban Somali refugees in setting up the helpdesks. Refugees would complement and verify the information being provided at the helpdesks since they also receive information on conditions back in Somalia through other channels (relatives and friends).

5.2.2 Inclusion of urban Somali refugees in the design and planning of repatriation processes

⁵⁰⁵Article 15 of the tripartite agreement.

All my interviewees said that urban Somali refugees had a role to play in the repatriation process. As highlighted in chapter four, one of my findings was that, challenges emanating from non-inclusion could be mitigated by the inclusion of urban Somali refugees in the decision making process.⁵⁰⁶ According to Andrew:

Stronger involvement of urban Somali refugees would lead to better appreciation of the repatriation process. The implementation of the tripartite agreement would be more workable if they were involved in decision making.⁵⁰⁷

During the drafting of the tripartite agreement, Somali refugees (urban and camp) should have been consulted and their views incorporated in the agreement. Their role in the repatriation process should have been outlined. As the tripartite agreement will be coming to an end in November 2016, my recommendation to the UNHCR, GOK and FGS is that Somali refugees should be included in the drafting of the new agreement or in the negotiations for the extension of the current agreement. One of my recommendations would be to include Somali refugees in the tripartite commission. This way the views of Somali refugees would be heard. In addition, Somali refugees should be part and parcel of the discussions on developing strategies, modalities and programmes on repatriation. Urban Somali refugees should also be included at the implementation stage of the repatriation process. For instance, their views on logistical arrangements during repatriation should be considered. Women, children and men should be included in the decision making processes. The views of all should be given equal weight.

⁵⁰⁶Daily Nation Newspaper (02/09/2016). The Jubaland government had detained Somali returnees from Kenya at Dhobley on the grounds of inadequate living conditions in Somalia. If refugees had been consulted, the detention would not have occurred.

⁵⁰⁷Interview with Andrew in Westlands, Nairobi County (01/09/2016).

5.2.3 A joint comprehensive plan should be developed by the UNHCR, GOK and FGS and Somali refugees.

One of the recommendations made was that refugees should take a key role in the implementation of the repatriation process. A number of conditions and processes need to be in place before repatriation of Somali refugees (urban and camp). First, a thorough assessment by the UNHCR, GOK, FGS and Somali refugees must be conducted before development of the joint plan. Once the assessment determines that the conditions in Somalia are conducive for the voluntary return of refugees, then the comprehensive plan should be developed. This plan would detail the minimum or basic conditions that must be in place before repatriation of Somali refugees. These would include education and health facilities, livelihoods opportunities, security and respect for human rights. The detailed plan should also indicate a time frame of when these basic conditions would be in place.

Out of my interviewees, there were 'second and third generation' refugees (born in Kenya), refugees married to Kenyans and economic refugees. My finding was that refugees born in Kenya did not want to repatriate as they didn't know Somalia.⁵⁰⁸ Similarly, according to my interviews with UNHCR and GOK, some Somali refugees do not want to go back to Somali because of economic benefits. Whereas others (mostly students) did not to repatriate as the timing was off. Thus, the need for the UNHCR, GOK, FGS and Somali refugees to develop a comprehensive plan for the repatriation process.

⁵⁰⁸ Interview with Abdi in Eastleigh, Nairobi County (22/11/2015).

In addition, my interviewees said that the repatriation package being provided was insufficient. There is a need to review it upwardly. Somali refugees should be involved when reviewing the return package to ensure that a reasonable amount is agreed upon UNHCR, GOK, FGS and the refugees.

5.2.4 Exploring other alternative options

Although voluntary repatriation has been identified as the ‘permanent solution’ to the refugee crisis, there is a need to explore whether it remains the ideal solution in the current global refugee plight. Other options beyond voluntary repatriation, local integration and resettlement need to be explored. From my literature review and interviews with UNHCR staff, local integration in Kenya was not viable whereas, resettlement to a third country was least favored (it is slow and only one percentage of refugees are considered).

It is obvious that urban Somali refugees in Kenya contribute to the economy of the country.⁵⁰⁹ Consequently, the GOK must take note of the economic benefits arising from the presence of urban Somali refugees and explore their status in Kenya. My recommendation is that the GOK should review the Refugee Act of Kenya (2006) so that urban Somali refugees are granted permanent residency. The UNHCR, GOK and FGS must work on the caseload of those belonging to the ‘second and third generation refugees’ or refugees who came to Kenya as children. From my

⁵⁰⁹Supra note 11 at 151, supra note 23 at 23 and interview with Anab in Westlands, Nairobi (29/12/2015).

interviews, this group of refugees did not associate Somalia as home since they had never been there. Thus, an alternative option for this group is critical.

My interviewees suggested the following options which can be explored by the GOK, FGS, UNHCR and the Somali refugees. They include; permanent residency, enhancing accessibility to business and work permits for Somali refugees, application for citizenship (mixed marriages between Somali and Kenyans). An alternative option suggested by Andrew was repatriation in a phased manner. Such that refugees who want to return should be given first priority whereas those who are not ready because of schooling or medical issues should be given a bit of time. Some of my interviewees were in universities and colleges in Kenya and wanted to complete their studies first before repatriating to Somalia. Another option suggested by Tom was that, land bordering Kenya and Somalia could be identified and Somali refugees could then be re-settled therein.

The time spent in exile by Somali refugees should also be taken in consideration while coming up with durable solutions or other options for refugees. Somali refugees ‘who have spent more than ten years in exile’⁵¹⁰ are less likely to go back home compared to those who had spent less than three years in exile.

⁵¹⁰Supra note 141.

BIBLIOGRAPHY

A. BOOKS

- 1 Accord 21, Endless War: A brief History of the Somali Conflict in Mark Bradbury and Sally Healy (eds), *Whose peace is it anyway? Connecting Somalia and international peacemaking* (Conciliation Resources 2010).
- 2 Aggarwal N.C, *An Introduction to Legal Theory and Comparative Law* (Central Law Publications 1994).
- 3 Alexander Betts and others, *UNHCR: The Politics and Practice of Refugee Protection Into the 21st Century* (Taylor & Francis Group 2008).
- 4 Assefaw Bariagaber, *Conflict and the refugee experience: Flight, Exile, and Repatriation in the Horn of Africa* (Ashgate Publishing, Ltd 2006).
- 5 CR Kothari, *Research Methodology: Methods and Techniques* (2nd edn, New Age International Publishers Limited 2004).
- 6 Craig Forcece, A distinction with a legal difference: the consequences of non-citizenship in the ‘war on terror’ in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens* (Cambridge University Press 2010).

- 7 Daniel Moeckli, Immigration law enforcement after 9/11 and human rights. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010).
- 8 Edwin Abuya, From Here to Where? Refugees living in protracted situations in Africa in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens* (Cambridge University Press 2010).
- 9 Eve Lester, Socio-economic rights, human security and survival migrants: Whose rights? Whose security?. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010).
- 10 Frances Nicholson, Protection and empowerment: strategies to strengthen refugees' human security. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010).
- 11 George Homans, *Foundations of Social Theory* (Cambridge University Press 1961).
- 12 George Casper Homans and Charles P. Curtis, *An Introduction to Pareto, His Sociology* (New York Publishers 1974)
- 13 H Russell Bernard, *Social Research Methods: Qualitative and Quantitative Approaches* (Sage Publications, Inc 2000).
- 14 Idil Lambo, *In the Shelter of each other: notions of home and belonging amongst Somali refugees in Nairobi* (UNHCR 2012).
- 15 Ioan Lewis, *Understanding Somalia and Somaliland: Culture, History, Society* (Hurst Publishers Ltd 2008).
- 16 Jack Lively and John Rees, *Utilitarian Logic and Politics: James Mill's Essay on Government', Macaulay's critique and ensuing debate* (Oxford Univeristy Press 1978).

- 17 Jane Mcadam and Ben Saul, An insecure climate for human security? Climate-induced displacement and international law. in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010).
- 18 Katy Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation* (UNHCR 2013).
- 19 Khalid Koser and Richard Black, The End of the Refugee Cycle? Richard Black and Khalid Koser (eds), *The End of the Refugee Cycle: Refugee Repatriation and Reconstruction* (Berghahn Books 1999).
- 20 Keith F Punch, *Introduction to Social Research: Qualitative and Quantitative Approaches* (2nd edn, Sage Publications Ltd 2005).
- 21 M.D.A Freeman, *Llyod's Introduction to Jurisprudence* 8thed. (Sweet and Maxwell 2008).
- 22 Michael van Notten, *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa* (The Red Sea Press, Inc 2005).
- 23 Megan Bradley, *Refugee Repatriation; Justice, Responsibility and Redress* (Cambridge University Press 2013).
- 24 Olive M Mugenda and Abel G Mugenda, *Research Methods* (Acts Press 1999).
- 25 Refugee Consortium of Kenya, *Asylum Under Threat: Assessing the protection of Somali Refugees in Dadaab refugee camps and along the migration corridor* (Pann Printers Limited 2012).
- 26 Robert Muggah, Once we were warriors: critical reflections on refugee and IDP militarisation and human security. in Alice Edwards and Carla Ferstman (eds), *Human*

Security and Non-Citizens: Law, Policy and International Affairs (Cambridge University Press 2010).

27 Robin Cohen, *The Cambridge Survey of World Migration* (2nd edn, Cambridge University Press 2010).

28 Sara Pavanello and others, *Hidden and exposed: Urban refugees in Nairobi, Kenya* (Humanitarian Policy Group 2010).

29 UNHCR, *Voluntary Repatriation: International Protection Handbook* (Geneva: UNHCR, 1996).

B. JOURNAL ARTICLES

1 Agata Bialczyk, 'Voluntary Repatriation and the Case of Afghanistan: A Critical Examination' [2008] Working Paper(46) Refugee Studies Centre.

2 Anthony H. Richmond, 'Sociological Theories of International Migration: The Case of Refugees' [1988] 36 (2) Sage Publications.

3 Assefaw Bariagaber, 'States, International Organisations and the Refugee: Reflections on the Complexity of Managing the Refugee Crisis in the Horn of Africa ' [1999] 37(4) The Journal of Modern African Studies.

4 Barbara Harrell-bond, 'Repatriation: Under What Conditions Is It the Most Desirable Solution for Refugees? An Agenda for Research' [1989] 32(1) African Studies Review.

5 Barry Stein and Frederick Cuny, 'Refugee Repatriation during Conflict: Protection and Post-Return Assistance' [1994] 4(3) Development in Practice.

6 Beth Whitaker, 'Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania' [2002] 21(1 & 2) Refugee Survey Quarterly.

- 7 BS Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' [2004] 23(3) Refugee Survey Quarterly.
- 8 Christine Venter, 'Eliminating Fear Through Recreating Community in Rwanda: The Role of the Gacaca Courts' [2009] 13 Texas Wesleyan Law Review.
- 9 Cleophas Karooma, 'Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda' [2014] Working Paper Series No.103, Refugees Studies Centre.
- 10 Douglas S. Massey and others, 'Theories of International Migration: A Review and Appraisal' [1993].
- 11 Edwin Abuya, 'A Place to call home: Temporary asylum in Australia-Lessons for South Africa' [2004] 15(3) Stellenbosch Law Review.
- 12 Edwin Abuya, 'Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective' [2007] 1(19) International Journal of Refugee Law.
- 13 Emmanuel Opoku Awuku, 'Refugee Movements in Africa and the OAU Convention on Refugees'[1995] 39 (1) Journal of African Law.
- 14 Everett S. Lee, 'A Theory of Migration', [1966] 3(1) Demography.
- 15 James Hathaway, 'The Right of States to Repatriate Former Refugees' [2005] 20(1) Ohio State Journal on Dispute Resolution.
- 16 James Hathaway, 'The Meaning of Repatriation' [1997] 9(4) International Journal of Refugee Law.
- 17 Kallu Kalumiya, 'Angola: A Model Repatriation Programme?' [2004] 23(3) Refugee Survey Quarterly.

- 18 Khalid Koser, 'Information and Repatriation: The Case of Mozambican Refugees in Malawi' [1997] 10(1) *Journal of Refugee Studies*.
- 19 Leonora Macewen, 'Voluntary repatriation and the participation of Mauritanian refugees' [2010] 34(1) *Forced Migration Review*.
- 20 Marjoleine Zieck, 'Voluntary Repatriation: Paradigm, Pitfalls, Progress' [2004] 23(3) *Refugee Survey Quarterly*.
- 21 Mark Evenhuis, 'Child-Proofing Asylum: Separated Children and Refugee Decision Making in Australia' [2013] 25(3) *International Journal of Refugee Law*.
- 22 Megan Bradley, 'Back to Basics: The Conditions of Just Refugee Returns' [2008] 21(3) *Journal of Refugee Studies*.
- 23 Michael Bhatia, 'Repatriation under a Peace Process: Mandated Return in the Western Sahara' [2003] 15(4) *International Journal Refugee Law*.
- 24 Naohiko Omata, 'Repatriation and Integration of Liberian Refugees from Ghana: the Importance of Personal Networks in the Country of Origin' [2012] 26(2) *Journal of Refugee Studies*.
- 25 Naohiko Omata, 'The Complexity of Refugees' Return Decision-Making in a Protracted Exile: Beyond the Home-Coming Model and Durable Solutions' [2013] 39(8) *Journal of Ethnic and Migration Studies*.
- 26 Naohiko Omata, 'The End of Refugee Life?' [2014] 26(3) *Journal of Social Justice*.
- 27 Nasreen Chowdhory, 'Assessing "Belonging" and Claims of "Home" among Refugees: A Note on Repatriation in South Asia' [2012] 4(1) *South Asian Journal of Peacebuilding*.
- 28 Oliver Bakewell, 'Returning Refugees or Migrating Villagers? Voluntary Repatriation Programmes in Africa Reconsidered' [2002] 21(1 & 2) *Refugee Survey Quarterly*.

- 29 Oliver Bakewell, 'Refugee Repatriation in Africa: Towards a Theoretical Framework?' [1996] 04/96 Occasional Paper Centre for Development Studies.
- 30 Peter Schuck, 'Law and the Study of Migration', [1997] Yale Law School.
- 31 Ruud Lubbers, 'Asylum for All: Refugee Protection in the 21st Century ' [2002] 24(1) Harvard International Review.
- 32 Sofia du Plessis and others, 'Democratisation in Africa: The role of self-enforcing constitutional rules' [2015] 15(1) African Journal on Conflict Resolution.
- 33 Vincent Chetail, 'Voluntary Repatriation in Public International Law: Concepts and Contents' [2004] 23(3) Refugee Survey Quarterly.

C. ELECTRONIC SOURCES

- 1 Amnesty International, 'Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal', (1 April 2016) available at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> accessed on 16/04/2016.
- 2 Amnesty International, No place like home: Returns and relocations of Somalia's Displaced, 8-9. Also see Human Rights Watch, World Report 2015: Somalia, available at <https://www.hrw.org/world-report/2015/country-chapters/somalia> (last accessed 29 June 2015) 1-6. Also see for details Human Rights Watch: Harsh War Harsh Peace 2011 report.
- 3 Hiraan Online, 'Somali president Hassan Sheikh Mohamud has invited Somali refugees back home', http://www.hiiraan.ca/news4/2013/Jan/27620/somali_president_hassan_sheikh_mohamu

- [d has invited somali refugees back home.aspx](#) (08 January 2013) accessed on 03/02/2016.
- 4 IRIN report, 'Durable solutions for refugees prove elusive', available at <http://www.irinnews.org/report/101735/durable-solutions-for-refugee-prove-elusive#.VjE4ZRnfom8> (10 July 2015) accessed on 12/07/2015.
- 5 Lisa Schlein, 'Voluntary Repatriation of Somali Refugee Begins', available at <http://www.voanews.com/content/voluntary-repatriation-of-somali-refugees-moving-ahead/2903925.html> (06 Aug 2015), accessed on 02/03/2016.
- 6 London Conference on Somalia: Communique (23 February 2012) <http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=727627582#> accessed on 13/09/2015.
- 7 Louise Mallinder, 'The Role of Amnesties in Conflict Transformation' (<https://www.academia.edu/>, 11 March 2009) https://www.academia.edu/177046/The_Role_of_Amnesties_in_Conflict_Transformation accessed 01/03/2016.
- 8 Michael Pizzi, 'Kenya call for Somali's to leave world largest refugee camp' (<http://america.aljazeera.com> 2013) <
<http://america.aljazeera.com/articles/2013/10/25/kenya-calls-for-emptyingofworldslargestrefugeecamp.html>> accessed on 21/06/2015.
- 9 Oxford Advanced Learner's Dictionary; available at <http://www.oxfordlearnersdictionaries.com/definition/english/repatriation> accessed on 10/10/2015.

- 10 Relief web, 'PSC Interview: Conditions in Somalia are 'not conducive' to the return of refugees from Dadaab', <http://reliefweb.int/report/kenya/psc-interview-conditions-somalia-are-not-conducive-return-refugees-dadaab> (31 August 2015) accessed on 09/01/2016.
- 11 Regional mixed migration secretariat (RMMS) at <http://www.regionalmms.org/fileadmin/content/monthly%20summaries/RMMSMonthlySummaryMarch%202016.pdf> (15 March 2016), accessed on 16/04/2016.
- 12 UNHCR, 'Dadaab- World's biggest refugee camp 20 years old', (21 Feb 2012) accessed 03/03/2016.
- 13 UNHCR website at <http://data.unhcr.org/horn-of-africa/country.php?id=110> (29 Feb 2016) accessed 16/04/2016.
- 14 UNHCR, 'UNHCR High Commissioner: Voluntary and sustainable return of Somali refugees a top priority', available at, <https://www.unhcr-regional.or.ke/news/somalia-unhcr-high-commissioner-voluntary-and-sustainable-return-somali-refugees-top-priority#sthash.THdLKvaa.14xHa54B.dpuf>(08 May 2015), accessed on 16/04/2016.
- 15 UNHCR, 'First Somali refugees in Kenya decide to return home as part of a new pilot project', available at <http://www.unhcr.org/5485b6e56.html> accessed 27/12/2014.

D. NEWSPAPERS

- 1 John Ngirachu and others, 'Security forces move to end Westgate mall siege as death toll rises to 62' available at <http://www.nation.co.ke/news/Westgate-Mall-attack-alshabaab-terrorism/-/1056/2004630/-/kr74w0/-/index.html> (23 September 2013) accessed on 13/09/2015.

E. REPORTS

- 1 Briefing of the Amnesty International, Forced returns to South Central Somalia, including Al Shabaab areas: A blatant violation of international law, (23 October 2014) AFR 52/005/2014.
- 2 Economic and Social Council report of the Office of Internal Oversight Services on evaluation of the office of the UNHCR 18 March 2015.
- 3 J.J Messner, 'Failed State Index 2014: Somalia Displaced as most-fragile State', (published June 24, 2014).
- 4 Report of the Special Rapporteur on the Human Rights of Migrants, 22 September 2004, UN Doc. A/59/377.
- 5 UNHCR, *World at War; UNHCR Global Trends on Forced Displacement in 2014* (UNHCR 2015).

F. MEDIA SOURCES

- 1 KTN news; 'Somali refugees to return home', available at <https://www.youtube.com/watch?v=S6-obpIAf-E> accessed on 03/02/2016.
- 2 K24, 'All PEV victims have been resettled', available at www.youtube.com/watch?v=Rd55F9Lvx9Y (29 August 2015), accessed on 12/04/2016.

G. OTHER SOURCES (ON FILE WITH THE AUTHOR)

- 1 Barry Stein, 'Refugee Repatriation, return and refoulment during conflict' [1997] USAID Conference Promoting Democracy, Human Rights and Reintegration in Post-conflict Societies.
- 2 BS Chimni, 'Legal and Policy Issues relating to UNHCR's involvement in the Protection, Facilitation or Encouragement of Voluntary Repatriation' [1993] UNHCR Round table consultations on voluntary repatriation.
- 3 Cleophas Karooma study on Post-Genocide Rwandan Refugees in South-western Uganda: their Attitudes and Responses to Repatriation 1994-2012.
- 4 Department of Refugee Affairs, Press Statement, 13/12/2012.
- 5 Kakuma News Reflector (KANERE), 'Democracy and Refugee Participation in Decision-Making' [2009] 1(4-5) Kakuma News Reflector 1-7.
- 6 UNHCR, 'Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia' (29/07/2015).
- 7 UNHCR Paper on Voluntary Repatriation presented to the 4th Meeting of the Global Consultations on International Protection, 25 April 2002 EC/GC/02/5 (Global Consultations on International Protection).
- 8 Tilde Nielsson, 'Circular repatriation: the unsuccessful return and reintegration of Iraqis with refugee status in Denmark' [2008] UNHCR Research Paper 165, 1-19.

H. THESIS

- 1 John S. Collins, 'An Analysis of the Voluntariness of Refugee Repatriation in Africa' [1996], research thesis at page 32-51; available at

http://www.umanitoba.ca/institutes/disaster_research/refugee_thesis/chapter3.pdf;

accessed on 06/09/2015.

I. STATUTES

- 1 Constitution of Kenya (2010).
- 2 Refugee Act of Kenya (2006).
- 3 Tripartite Agreement between UNHCR, Government of Kenya and the Government of Somalia, 10 November 2013.
- 4 Tripartite Agreement for the Voluntary Repatriation of Liberian Refugees between Government of Ghana and Liberia and the UNHCR, 22 September 2004.

J. LIST OF CITED INTERNATIONAL LEGAL INSTRUMENTS

- 1 African Youth Charter, adopted 2 Jul.2006.
- 2 International Covenant on Civil and Political Rights 1966 (GA res.2200A (XXI), 16 December 1966, 999 UNTS 171; entry into force 23 March 1976 (ICCPR).
- 3 International Covenant on Economic, Social and Cultural Rights 1966 (GA res.2200A (XXI), 16 December 1966, 999 UNTS 171; entry into force 3 January 1976 (ICESCR).
- 4 Statute of the Office of the United Nations High Commissioner for Refugees (GA res. 428(V), 14 December 1950).
- 5 The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugees Problems in Africa 1969, adopted by the Assembly of Heads of States and Government at its Sixth Ordinary Session, Addis Ababa, 10 September 1969 1001 UNTS 45; entry into force 20 June 1974.

- 6 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 Jul. 2003.
- 7 The Protocol Relating to the Status of Refugees, entered into force on 4 October 1967.
- 8 Universal Declaration of Human Rights 1948 (GA res 217A (III), 10 December 1948).
- 9 United Nations Convention Relating to the Status of Refugees, adopted on 28 July 1951, 189 U.N.T.S. 137 (entry into force 22 April 1954).
- 10 United Nations Convention on the Rights of the Child, adopted on 20 November 1989, GA res.44/25 U.N Doc. A/44/736 1989 (entry into force 2 September 1990), (UN CRC).
- 11 UN Convention relating to the Status of Stateless Persons 1954, 360 UNTS 117; entered into force 6 June 1960.
- 12 UN Convention on the Reduction of Statelessness 1961, (30 August 1961), 989 UNTS 175; entered into force 13 December 1975.

K. SOFT LAWS

- 1 Cartagena Declaration on Refugees (19-22 November 1984).
- 2 UNHCREXCOM Conclusion No. 29 (XXXIV)-1983.
- 3 UNHCR EXCOM Conclusion No.58 (XL)-1989.
- 4 UNHCR EXCOM Conclusion No. 79 (XLVII)-1996.
- 5 UNHCR EXCOM Conclusion No.40 (XXXIV)-1985.
- 6 UNHCR EXCOM Conclusion No.101 (LV)-2004.
- 7 UN SC Resolution 1325, (2000) (adopted at its 4213th meeting on 31 Oct.2008)
- 8 UN SC Resolution 1373, 28 Sept. 2001, UN Doc. S/RES/1373 (2001).
- 9 UN SC Resolution 1624, 14 Sept.2005, UN Doc. S/RES/1624 (2005).

APPENDIX ONE

Interview schedule with urban Somali refugees

Study Title: Voluntary repatriation of urban Somali refugees: a case of inclusion in decision making process

Researcher: Veronicah Wakarima, LL.M Candidate, University of Nairobi

Supervisor: Professor Edwin Abuya

Introduction

Good day Sir/Madam,

Thank you for accepting to participate in this interview. I am currently pursuing my Masters Degree in Law at the University of Nairobi. As part of the course complement, I am required to write and present a Project Paper in an area of interest. As indicated above, my topic of study is “Involvement of Somali urban refugees in the decision making process to repatriate from Kenya to Somalia.” This interview schedule is administered as part of a study on the voluntary repatriation of Somali refugees in Kenya. On 10th November 2013 the Governments of Kenya and Somalia together with UNHCR signed a tripartite agreement that guarantees voluntary repatriation of Somali refugees in Kenya. Voluntary repatriation ensures that return takes place in the free- will of a refugee. The study intends to assess the factors affecting the decision making process of urban Somali Refugees to repatriate to Somalia as well as their level of involvement the decision making process to repatriate.

As a participant in this interview, please note the following:

- Your participation is entirely voluntary. You may withdraw at any time from the interview;
- The interview is intended to take approximately 1 hour;
- In the event that any question administered during the interview is not clear, feel free to ask for clarification;
- Your responses will be recorded on the interview schedule or note book; and
- Your identity as a participant in this interview will be protected by an identifying code number known only to the researcher. You will not be named in any study reports, presentations or publications.
- Do you agree to participate in this study?

Yes: _____

No: _____

Please sign below confirming your decision:

Signature: _____

(Accept/Decline)

Please complete the following background information:

1. Name [optional]:.....
2. Refugee/asylum seeker:.....
3. Age (tick): 15-17 18-25 26-35 36-50 above 50
4. Gender (tick) Female Male
5. How long have you lived in Kenya (tick)?
0-3 years 5-10 years Over 10 years

6. Date of the interview.....
7. Time of the interview: Start.....End.....
8. Language of the interview, if not English.....

General questions

Topic 1: Introduction

1. When did you leave Somalia?
2. What caused you to leave Somalia?
3. Are you aware of the proposed voluntary repatriation process (tick)? : Yes No
4. How would you describe the planned voluntary repatriation?
5. What are your fears in the repatriation exercise or what challenges do you think you will face?

Topic 2: A refugee's right to participate in decision making

1. Did someone speak to you on whether or not you want to go back to Somalia? Yes/No. If yes, who spoke to you?
2. Who do you think should make the decision of whether or not a refugee should go back to their country?
3. Why do you think it's important for UNHCR or the Government of Somalia or the Government of Kenya to speak to you before they decide to take refugees back to their country?
4. Are there any social factors that influence the decision of refugees to go back to Somalia? (Security, age, gender, health, schools, hospitals, sanitation). Please explain
5. Are there any economic factors that influence the decision of refugees to go back to Somalia? Please explain.

6. Are there any political factors in Kenya or Somalia that influence the decision of refugees to repatriate? Please explain.

Topic 3: Conditions conducive for voluntary repatriation

1. Are you aware of the existing situation in Somalia? (Yes/No) Please explain.
2. Does the situation in Somalia make you decide that you want or you do not want to go back to Somalia?
3. What do you think UNHCR or the government of Kenya or the government of Somalia can do or put in place before asking refugees to go back to Somalia?
4. What would you like to see in Somalia so that you can go back?

Topic 4: Voluntary Repatriation of Refugees

1. Are you willing to go back to Somali, if yes or no, give reasons for your choice?
2. What are the social factors in Kenya or Somalia that will influence your decision to go home?
3. What are the economic factors in Kenya or Somalia that will influence your decision to go home?
4. Are there any political factors in Kenya or Somalia that will influence your decision to go home?
5. Would you call Somalia home? Please explain.

Please provide any other comments or suggestions that you may have-----

APPENDIX TWO

Interview schedule for institutional interviews (UNHCR, NGOs and GOK)

Study Title: Voluntary repatriation of urban Somali refugees: a case for inclusion in the decision making process

Researcher: Veronicah Wakarima, LL.M Candidate, University of Nairobi

Supervisor: Professor Edwin Abuya

Introduction

Good day Sir/Madam,

Thank you for accepting to participate in this interview. I am currently pursuing my Masters Degree in Law at the University of Nairobi. As part of the course complement, I am required to write and present a Project Paper in an area of interest. As indicated above, my topic of study is on “Voluntary repatriation of urban Somali refugees: a case for inclusion in the decision making process.” This interview schedule is administered as part of a study on the voluntary repatriation of Somali refugees in Kenya. On 10th November 2013 the Governments of Kenya and Somalia together with UNHCR signed a tripartite agreement that guarantees voluntary repatriation of Somali refugees in Kenya. Voluntary repatriation ensures that return takes place in the free- will of a refugee. The study intends to assess the factors affecting the decision making process of urban Somali Refugees to repatriate to Somalia as well as their level of involvement the decision making process to repatriate.

As a participant in this interview, please note the following:

- Your participation is entirely voluntary. You may withdraw at any time from the interview;
- The interview is intended to take approximately 1 hour;
- In the event that any question administered during the interview is not clear, feel free to ask for clarification;
- Your responses will be recorded on the questionnaire; and
- Your identity as a participant in this interview will be protected by an identifying code number known only to the researcher. You will not be named in any study reports, presentations or publications.
- Do you agree to participate in this study?

Yes: _____

No: _____

Please sign below confirming your decision:

Signature: _____

(Accept/Decline)

Please complete the following background information:

9. Name [optional]:.....

10. Institution:.....

11. Gender (tick) Female Male

12. Date of the interview.....

13. Time of the interview: Start.....End.....

14. Language of the interview, if not English.....

General questions

Topic 1: Introduction

1. What's your opinion of the voluntary repatriation of Somali refugees from Kenya?
2. Were refugees consulted or involved in any stage of the decision making process to repatriate? (Yes or No) explain?

Topic 2: Voluntary Repatriation of Refugees

1. Would you call/consider the current voluntary repatriation of Somali refugees as voluntary? (Yes/No) Please explain.
2. What alternatives options are available for refugees other than voluntary repatriation and are they feasible?

Topic 3: Conditions conducive for voluntary repatriation

1. Do you think conditions in Somalia are conducive for the voluntary return of Somali refugees? (Yes/No) Please explain.
2. In your opinion what the basic minimum conditions that should be in place before repatriating refugees to Somalia?

Topic 4: A refugee's right to participate in decision making

1. Do you think refugees have a role to play in the decision making process? (Yes or No). Please explain.
2. At what stage do you think refugees should be involved in the decision making process?
3. In what ways can refugees be involved in the decision making to repatriate?

Please provide any other comments or suggestions that you may have-----

APPENDIX THREE

List of respondents (urban Somali refugees, UNHCR, NGO and GOK staff in Nairobi)

| S/No. | Pseudo name | Gender | Location | Date | Occupation |
|-------|-------------|--------|-----------|-------------|-----------------------|
| 1 | Fatuma | F | Eastleigh | 15 Nov 2015 | Refugee/businesswoman |
| 2 | Bisharo | F | Eastleigh | 15 Nov 2015 | Refugee/student |
| 3 | Hawa | F | Eastleigh | 15 Nov 2015 | Refugee/student |
| 4 | Zeinab | F | Eastleigh | 15 Nov 2015 | Refugee/ student |
| 5 | Hamdi | F | Eastleigh | 15 Nov 2015 | Refugee/Businesswoman |
| 6 | Halima | F | Eastleigh | 17 Nov 2015 | Refugee/student |
| 7 | Abdi M | M | Eastleigh | 17 Nov 2015 | Refugee/Peasant |
| 8 | Mohamed | M | Eastleigh | 19 Nov 2015 | Refugee/Peasant |
| 9 | Abdi | M | Eastleigh | 22 Nov 2015 | Refugee/Taxi driver |
| 10 | Yusuf | M | Eastleigh | 22 Nov 2015 | Refugee/ Peasant |
| 11 | Zahra | F | Eastleigh | 23 Nov 2015 | Refugee/businesswoman |
| 12 | Ayan | F | Eastleigh | 26 Nov 2015 | Refugee/student |
| 13 | Abdiqani | M | Eastleigh | 26 Nov 2015 | Refugee/ employed |
| 14 | Ayub | M | Eastleigh | 26 Nov 2015 | Refugee/employed |
| 15 | Omar | M | Eastleigh | 26 Nov 2015 | Refugee/employed |
| 16 | Bashir | M | Eastleigh | 28 Nov 2015 | Refugee/self employed |
| 17 | Kaltun | F | Eastleigh | 29 Nov 2015 | Refugee/student |

| | | | | | |
|----|--------|---|-------------|-------------|--|
| 18 | Zaima | F | Eastleigh | 29 Nov 2015 | Refugee/businesswoman |
| 19 | Anab | F | Westlands | 29 Dec 2015 | Refugee/ employed |
| 20 | Andrew | M | Westlands | 01/09/2016 | Danish Refugee Council |
| 21 | Mary | F | City Centre | 02/09/2016 | UNHCR Somalia |
| 22 | John | M | Lavington | 09/09/2016 | Refugees Affairs Secretariat |
| 23 | Tom | M | Nairobi | 09/09/2016 | Directorate of immigration and registration of persons |
| 24 | Sam | M | Westlands | 20/09/2016 | Refugee Consortium of Kenya |
| 25 | Ben | M | Skype | 21/09/2016 | UNHCR Kenya (Dadaab) |