

**STATE STABILITY AND THE CRISIS OF REFUGEES IN KENYA:
REPATRIATION AND RESETTLEMENT OF THE SOMALI REFUGEES
IN DADAAB CAMP**

By

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DECLARATION

This research has not been previously accepted for any degree and is not being currently considered for any other degree at any other university.

I declare that this Dissertation contains my own work except where specifically acknowledged.

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ACRONYMS AND ABBREVIATIONS

AFP	Agence France Presse
AU	African Union
AMISOM	African Union Mission In Somalia
BBC	British Broadcasting Corporation
CNN	Cable News Network
CS	Cabinet Secretary
DRA	Department of Refugee Affairs
DRC	Danish Refugee Council
DW	Deutsche Welle
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
ECRE	European Council on Refugees and Exiles
EPAU	Evaluation and Policy Analysis Unit
EU	European Union
FGD	Focus Group Discussion
FMR	Forced Migration Review
GDDP	Garissa District Development Plan
HIPS	Heritage Institute for Policy Studies
HRW	Human Rights Watch
IGAD	Inter-Governmental Authority in Trade and Development
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICU	Islamic Courts Union
IHL	International Humanitarian Law
IOM	International Organization for Migration
IRIN	Integrated Regional Information Network
IRRI	International Refugee Rights Initiative
ITW	In Touch Weekly
KDF	Kenya Defence Forces
KNCHR	Kenya National Commission Human Rights
KTN	Kenya Television Network
MP	Member of Parliament
MSF	Médecins Sans Frontières
NEP	North Eastern Province

NGO	Non Governmental Organization
OAU	Organization of African Unity
OECD	Organization for Economic Co operation and Development
PMT	Population Movement Tracking
PRS	Protracted Refugee Situations
PS	Principal Secretary
RCK	Refugee Consortium of Kenya
SFG	Somali Federal Government
SNAF	Somali National Armed Forces
SPF	Somali Police Force
TA	Tripartite Agreement
TFG	Transitional Federal Government
UK	United Kingdom
UKIP	United Kingdom Independent Party
UN	United Nations
UNITAF	Unified Task Force
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNOSOM	United Nations Operation in Somalia
UNPBF	United Nations Peace Building Fund
UNRISD	United Nations Research Institute for Social Development
UNRWA	United Nations Relief and Works Agency
UNSC	United Nations Security Council
USA	United States of America
USCR	United States Committee for Refugees
VOA	Voice of America
WW2	World War 2

ABSTRACT

The repatriation of refugees is a complex phenomenon that requires extensive consultation especially among refugees and potential returnees. Even though several repatriations have failed as returnees flee again, the refugee actors have not significantly changed their approach to refugee repatriations so as to curb and reduce such failed repatriations. In this dissertation, I examine the Tripartite Agreement signed between the governments of Kenya, Somalia and the UNHCR on 10th November 2013. This agreement is to guide the repatriation of approximately half a million Somali refugees from the Dadaab refugee camp in Northeastern Kenya. I argue that organized repatriations overlook refugee voices as experts and elites influence politics and policy surrounding repatriations. With refugees at the periphery of this decision-making, refugee actors make decisions about them that lack their input and, subsequently, the legitimacy of the decisions made on behalf of refugees. While tripartite parties agree, theoretically, on the need to promote voluntary repatriation of Somali refugees from Dadaab, in practice, they differ on how this should be carried out without rendering repatriation involuntary. I maintain that the refugee regime, the 1951 UN Convention, needs to be changed as it is outdated, narrow in scope and does not address the new realities of the refugee problem. For instance, it does not recognize socio-economic causes of refugees. The study finds that the majority of Somali refugees in Dadaab neither know of the existence of a TA supporting their voluntary return, nor its contents. In this regard, I argue that refugees should be actively involved in decision making regarding repatriation and must not be relegated to the periphery. To address the refugee problem in Africa, I argue that focus should shift from the plight of refugees to addressing the reasons for the flight. As argued in this dissertation, only about 25% of Somali refugees in Dadaab have accepted repatriation since 2014 with many citing insecurity, lack of livelihood opportunities and social services as some of the reasons they have not repatriated. Cases of involuntary returns like that of Afghan, Rwandese and Rohingya refugees are cited as warning against unsustainable induced returns. As a deterrent measure, I contend that efforts by the international community should be focused on mitigating potentially explosive conflicts without necessarily interfering with sovereignty of concerned states. I argue that sustained peace and security that guarantee involuntary return is only possible by solving the reasons for the flight. The primary sources of the study included interviews, focus group discussions and personal observation. It was then categorized into various themes to address the set objectives.

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CHAPTER ONE:

INTRODUCTION TO THE STUDY

1.1 Background of research topic

Dadaab refugee camp is undoubtedly the world's largest refugee camp, hosting more than half a million refugees. Most of these refugees are of Somali nationality who fled their country more than two decades ago (1991) after the then president Siad Barre¹ was ousted, ushering the country into anarchy. This was after warring clans of Auliyah, Shikhals, Degodia, Ajuraan, Ogaden and other unranked families of Hawiye, Darod, Isaq, Dir and Digil² failed to agree on how to share power, forcing the country to drift into a civil war that has claimed thousands of lives and displaced millions. Many of these displaced persons have fled to Dadaab camp in Northeastern Kenya as refugees. The Islamic Court Union³, and currently Al Shaabab, has been fighting to install a *sharia* compliant government, with the population divided along both religious and clan lines⁴. Until August 2012, apart from the Transitional Federal Government, Somalia had been

¹Siad Barre was a Somali military general who overthrew the second democratically elected, but corrupt, civilian government of Somalia in October 1969. While in power Siad Barre significantly eroded the norms and mechanisms of governance within clans and the agreements that had existed between them. He was later overthrown by a coalition of clan-based forces. Most conflicts in Somalia since 1991 have taken the form of civil war. The Somali community is homogenous and almost 99% Muslim. Clanism is a platform to advance and defend interests.

³This was an Islamic militant group that ruled Jubaland in Somalia between mid 2006-2007. It was dominated by Hawiye and Ogaden clans including leaders from RasKamboni and Al Shabaab.

⁴G. Loescher, G. *Refugee Movements and International Security*, Adelphi Paper 268, London: Brassey's for IISS, 1992.

without a functional government for almost 20 years⁵. The Somali Federal Government (SFG) was inaugurated in August 2012. This first internationally recognized Somali government since 1991 is struggling to restore law and order with opposition from militant group Al Shabaab.

Geographically, Kenya is located in the Eastern part of the African continent, between 5 degrees North and 5 degrees South latitude and 24 and 31 degrees East longitude. The equator cuts across the country from East to West. The neighbouring countries comprise Uganda to the west, Ethiopia and Sudan to the north, Tanzania to the south, Somalia to the northeast, and the Indian Ocean to the southeast with a coastline of about 536 kilometres. The country's total area covers about 582,650 Km². From this, 569,250 Km² (97.8%) constitutes dry land while 13,400 Km² (2.2%) constitutes water bodies. Approximately 80% of the land area is arid or semi-arid and only 20% is arable. After the promulgation of the new constitution on 27 August 2010, the country was divided into 47 administrative units referred to as Counties which replaced the previous 8 provinces. The 47 Counties were further sub-divided into districts, divisions, locations and sub-locations as the smallest administrative units.

Five combined refugee camps give Dadaab the unenviable title of the world's largest refugee complex comprising Hagadera, Dagahaley, Ifo 1, Ifo 2 and Kambios. According

⁵Amnesty International, *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

to the United Nations High Commissioner for Refugees (UNHCR), there are more than half a million refugees—mostly Somalis—in Dadaab.⁶ The complex is based in the Garissa district of Kenya, approximately 100 km from the border between Somalia and Kenya.

Kenya, like other refugee hosting countries in the world, has been reluctant to host refugees citing, *inter alia*, security and political threats posed by the refugees. Somali refugees in Kenya have posed a particular challenge to Kenya, given Somalia's historical relationship with Kenya. This has been a hostile relationship. Somalia has been a security concern to Kenya since independence (beginning with the Shifta movement that waged a secessionist war supported by Mogadishu) to the current security threats posed by terrorist elements.⁷

While the Shifta movement and the current terrorist groupings like the Al Shabaab have been motivated by different interests, both militant groups have helped entrench the perception of Kenya towards Somalia—that of seeing Somalia as a security threat⁸ to Kenya. This explains why the Kenyan government has frequently accused Somali refugees of being Al Shabaab sympathizers and providing a safe haven for terrorist

⁶ Interview with one UNHCR official in Dadaab on 20 February, 2016. There is a sizeable number of 'unregistered refugees' who reside in the camps and cities like Nairobi but who do not appear officially as refugees in either the UNHCR records or those of the Government of Kenya.

⁷ See P. Kirui, (2012) 'The Impact of Refugee Settlement on Security: A Case Study of Dadaab Refugee Camp in North-eastern Kenya, 1991-2011', p.9. Unpublished Master's Thesis, SASS, Moi University, 2012.

⁸ NIS, 'Terror groups pose biggest threat to Kenya's security', *The Daily Nation*, 20 September 2017, www.nation.co.ke/news/NIS-terrorism-security-threat/1056-4103606-b06cccz/index.html (accessed 27 November 2017).

elements inside⁹the refugee camps in Kenya. Some¹⁰ however have dismissed this as mere scapegoating by Kenya for the failure to provide adequate security to its citizens.

The 'Shifta' war (1963-1967) was sponsored by Mogadishu in a bid to claim the North Eastern Province (NEP) of Kenya, occupied by Somalis, as part of the 'Greater Somalia'. During independence, many of the residents of NEP in Kenya favoured secession from Kenya in order to unify with Somalia. Kenya's first president, Jomo Kenyatta, resisted and crushed the secessionist group vowing not to concede an inch of Kenyan soil to Somalia. Consequently, Kenya imposed emergency rule in the NEP which lasted until 1991. The recent rise of terrorist groupings in Somalia that wage attacks on Kenyan soil continue to strain the relationship between Kenya and Somalia, resulting in continued suspicion and mistrust.

The need to manage the political aspects of Somali refugees that range from armed militants, terrorist elements, and radical clerics that call for the killing of non-Muslims (among others), has increasingly made Kenya uncomfortable with hosting thousands of Muslim Somali refugees within the state. More than 99% of Somalis are Muslims. While some Kenyan nationals engage in the above criminal activities too, the government of

⁹ M. Yusuf, 'Kenya, Somali Refugees Exchange Blame for Attacks', *Voice of America*, 21 December 2012, www.voanews.com/a/kenya-somali-refugees-exchange-blame-for-attacks/1569769.html (accessed 27 November 2017)

¹⁰The Economist, 'Kenya and its Somalis Scapegoats: closing a huge Somali refugee camp in Kenya would not reduce terrorism', *The Economist*, 9 May 2015 (accessed 27 November 2017)

Kenya has been very outspoken in condemning refugees for the rising cases of insecurity especially those that are terror related. For example, following the September 21, 2013 WestGate Mall terrorist attack in Nairobi that claimed at least 68 lives, the Kenyan government accused refugees and the Dadaab camps as having acted as a training ground for the perpetrators of the attack.¹¹

Kirui and Mwaruvie suggest that, 'A major security threat in Dadaab is that caused by combatants and military groups such as Al Shabaab posing as refugees.'¹²Besides this, Kirui notes that the long Kenya-Somalia border is porous and security agencies are overstretched to monitor all border points.¹³In view of this, the refugees in Dadaab suffer with further insecurity as conflicts in Somalia easily spread to the camps. Repatriation, therefore, may not necessarily affect the physical security of refugees as the boundary between Kenya and Somalia remains porous. Consequently, repatriating Somali refugees to Somalia and next to Kenya's border has little implication in terms of their physical security. In fact, the security of Somali refugees may improve as they would be free to engage in economic activities as citizens, as compared to the encampment policy in Kenya. Kenya as a host to the world's largest refugee camp should therefore be proactive at the forefront in facilitating the permanent settlement for refugees. Kenya's military

¹¹ Aljazeera News, 25th Oct.2013, BBC News, 30th September, 2013

¹² P. Kirui and J. Mwaruvie, 'The dilemma of hosting refugees: A focus on the insecurity in North-eastern Kenya', *International Journal of Business and Social Science*, vol.3, no.8, 2012, p.168.

¹³P. Kirui, 'Impact of Refugee Settlement on Kenya's Security: A case study of Dadaab Refugee camps in Northeastern Kenya, 1991-2011', MA Thesis, Moi University,2012,p. 66.

incursion¹⁴further complicates the matter since Kenya has now actively involved itself in Somalia's affairs, making it practically difficult for Kenya to continue pursuing her policy of non-interference and non-aggression towards her neighbours, especially Somalia. As a result, Kenya has not only involved itself in Somali affairs inside Somalia but has to also deal with the challenges posed by Somali refugees in Dadaab refugee camps in Kenya

It is evident that countries are reluctant to host refugees in the long-term.¹⁵ According to Weiner, 'the very form and intensity of response to unwanted migrations is itself an indication that such population flows are regarded as threats to security or stability.'¹⁶In Kenya, Somalis are perceived as a homogenous ethnic group, 'practicing a single religion, Islam, the Somali form a distinct nation'¹⁷It is this distinction that creates challenges for integration within Kenya whose population is predominantly Christian.

¹⁴Kenya's military incursion began in mid-October 2011 when the Government of Kenya declared war on the terrorist group Al Shabaab and deployed the Kenya Defense Forces (KDF) in hot pursuit inside Somalia. Following the military offensive, Al Shabaab promised retaliation, threatening attacks on Nairobi and to bring war to Kenya. See also BBC News, Somali militants Al Shabaab threaten Kenya retaliation, 17 October 2011, <http://www.bbc.co.uk/news/world-africa-15342091>, [accessed 14.12.13].

¹⁵Host countries have become reluctant to host refugees because of the fear that the refugees are no longer a short-term challenge as earlier thought in the 1940's during the Second World War. The unquestionable assumption in the 1940's was that refugees were in their host countries temporarily and that they would go back to their home countries as soon as the Second World War ended. Prolonged refugee stays however put undue strain on already fragile economies and attitudes in the host countries began to shift. See also El-Abed, *Unprotected Palestinians in Egypt since 1948*, Ontario, Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170

¹⁶M. Weiner, 'Security, Stability, and International Migration', *International Security*, Vol. 17, No. 3 (Winter, 1992-1993), p.125

¹⁷D. Kromm, 'Irredentism in Africa: The Somali-Kenya Boundary Dispute', *Transactions of the Kansas Academy of Science*, vol.70, no.3, 1967, p.359

The failed campaign of the Somalia government in the Shifta War¹⁸(1963-1967)that sought to annex Northeastern Kenya in order to have a unified Greater Somalia was motivated by the desire to have all Somalis in a one-nation¹⁹Somalia. While Somalia in the 1960's maintained that peace with Kenya would only prevail after the NEP province in Kenya joins Somalia, the civil war that broke out in Somalia 1991 was neither related to the secessionist movement, the Shifta, nor its agenda. The protracted civil war in Somalia, therefore, seems to be mainly fuelled by dynamic local conflicts within Somalia that undermine efforts to revive the state. As Menkhaus observes:

Only by distinguishing between local interests in armed conflict, criminality, and state collapse can observers make sense of the otherwise puzzling behavior of the Somali political, civic and economic actors who promote peace and local policing systems while quietly undermining efforts to revive the state.²⁰

According to him, local forces in Somalia may not be interested in sustainable peace and will tend to upset any attempts to restore functional governance structures in Somalia. Repatriation is normally informed by other broader dynamics like the perception of the host community towards refugees, perceptions around state collapse and failure, the

¹⁸An armed secession movement started in the region, which led to a series of confrontations known as the 'Shifta wars'. In 1963, Kenya imposed emergency rule in NEP which lasted until 1991. The conflict continued throughout the 1960s until the brutal suppression of the uprising by Kenya's security forces. This marked the beginning of decades of human rights violations against ethnic Somalis which saw thousands killed. For more information see USAID (Ken Menkhaus), *Kenya-Somalia Border Conflict Analysis*, 31 August 2005, p 10. See also Human Rights Watch, 'Criminal Reprisals: Kenyan Police and Military Abuses Against Ethnic Somalis', May 2012, p 14.

¹⁹ M.Tarmakin, 'The Roots of Political Stability in Kenya', *African Affairs*, Vol. 77, No. 308, p.320.

²⁰K. Menkhaus, 'Governance without government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, Vol. 31, No. 3 2007,p.76.

relationship between the Kenyan state and the Somali state, and perceptions by UNHCR, NGOs, refugees and the international community at large concerning the implications of hosting refugees and immigrants in general. When refugees are perceived as useful to a host country, it is unlikely that the host state will call for their repatriation. Congolese refugees in Johannesburg, for instance, experience the perceptions of many South Africans who 'regard the refugees in their midst as fakes and fraudsters.'²¹Few host states would portray refugees as contributing significantly to the host state both politically, economically or socially but will instead tend to underscore the perceived adverse effects associated with refugee presence.²² Complaints against the refugees tend to attract the international attention which could in turn promote various forms of funding supposedly to correct the 'harm' that could have been caused to the environment, the economy, and the labour²³market. Blaming refugees could also be a strategy in which refugees are used as a scapegoat by politicians in the host state whom have failed to provide basic essential services to the population²⁴.In its report, the Human Rights Watch argues that despite frequent accusations, Kenyan government officials haven't produced any tangible

²¹ J. Crush, *Immigration, Xenophobia and Human Rights in South Africa*. Cape Town, SAMP,2001,p.20
J. Crush and V. Williams, *Evaluating Refugee Protection in South Africa*. SAMP Immigration Policy Brief, No.7, 2002, p.14.

²²For instance, when the town of Macenta on the Liberian border was attacked on 29th September 2000, claiming 67 lives and forcing both Guineans and refugees to flee the area, the Guinean government blamed the refugees (Sierra Leoneans and Liberians)in its territory for the attacks. See Human Rights Watch, 'The Refugee Crises in Guinea: Another Macedonia?' www.hrw.org/news/2000/10/03/refugee-crisis-guinea-another-macedonia(accessed 27 November 2017)

²³ The influx of Syrian refugees in Jordan since early 2012 has raised concerns that it constitutes a threat to the employment and livelihoods of host community Jordanians. See S. Ajluni and M. Kawar, 'The Impact of Syrian refugee crisis on the labour market in Jordan: A preliminary analysis', International Labour Organization, Regional Office for the Arab States,2014,p.18

²⁴Human Rights Watch, 'Dispatches: Scapegoating Refugees in Kenya' www.hrw.org/news/2016/05/11/dispatches-scapegoating-refugees-kenya (accessed 27 November 2017)

evidence that refugees are responsible for the attacks.²⁵ According to the report, multiple investigations, including parliamentary inquiries point to pervasive corruption, lack of coordination, and other bungling by security agencies as key contributors²⁶ to the failure to prevent or adequately respond to attacks.

Although repatriation is arguably the most suitable²⁷ solution to refugee problems worldwide, the manner and timing of the process is a delicate and dynamic one. UNHCR's support for repatriation as the most preferred solution to refugee problem may have been informed by the fact that it is relatively easier for one to relocate to his or her home country as compared to the complex dynamics of integration into a host state or resettlement in a third country. It could also be as a result of a reasoned judgment that with the world now grappling with millions of refugees, repatriation may be the most tenable solution especially when dealing with several thousands or millions of refugees. In the rest of the world, until the early 1980s, solutions to the refugee problem were invariably sought in the context of exile²⁸. It was only since the beginning of the 1980s that

²⁵Human Rights Watch, 'Dispatches: Scapegoating Refugees in Kenya' www.hrw.org/news/2016/05/11/dispatches-scapegoating-refugees-kenya (accessed 27 November 2017)

²⁶Human Rights Watch, 'Dispatches: Scapegoating Refugees in Kenya' www.hrw.org/news/2016/05/11/dispatches-scapegoating-refugees-kenya (accessed 27 November 2017)

²⁷Of the three 'durable' solutions to refugee situations-voluntary repatriation, integration, and resettlement-the Office of the United Nations High Commissioner for Refugees (UNHCR) proclaims voluntary repatriation to be the most desirable. See, B. Harrell-Bond, 'Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research', *African Studies Review*, 32(1), 1989, p. 41.

²⁸ G. Coles, 'Solutions to the Problem of Refugees and the Protection of Refugees - A Background Paper', Geneva, International Institute of Humanitarian Law and the UNHCR, 1989.

repatriation 'whenever feasible' has been emphasized as constituting 'the most desirable solution to the refugee problem'²⁹.

However, sustainable solutions may not be found through boardroom meetings that tend to overlook the refugees who are key players in the success of the programme. A more refugee-centered approach is therefore paramount if refugees are to appreciate and own the repatriation process as a solution that considers their interests as paramount.

1.2 Problem statement

After hosting Somali refugees for more than two decades, Kenya, has in the recent past insisted that Somali refugees should be repatriated. Citing improved physical security in Somalia and Kenya's security challenges (especially those posed by the Somalia terror group, Al Shabaab), the Government of Kenya signed a Tripartite Agreement (TA) with the Federal Government of Somalia (FGS) and the United Nations High Commissioner for Refugees on 10th November, 2013. This was a roadmap for the voluntary repatriation of Somali refugees.³⁰ The effectiveness and efficiency of the Tripartite Agreement remains to be seen in the future. Kenya, having sent troops to secure Somalia, claims that Somalia is now 'safe for the return' of refugees and, as such, Somali refugees are no longer welcomed in Kenya. This has raised alarm among conflict experts, refugees,

²⁹EXCOM 1980 UNHCR Executive Committee 31st Session No. 18.

³⁰The Tripartite Agreement between The Government of the Republic of Kenya, The Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees living in Kenya was signed 10 November, 2013. It provided the legal framework and roadmap for voluntary repatriation.

humanitarians³¹ and political scientists on the sincerity of Kenya in terms of the safety of Somalia. This is especially so considering the fact that the comment³² that Somalia was now 'safe' was preceded by accusations of terrorism and criminality against Somali refugees³³. This dissertation, seeks to interrogate repatriation process especially as viewed and understood by refugees through their lived experiences in Somalia and Dadaab refugee camps in Kenya.

While the government and other players have often emphasized repatriation, little focus upon what constitutes a successful repatriation, and when and how to repatriate, has been considered. Repatriation processes have also tended to bypass the refugees' active involvement leading to many failed repatriations and hence 'recycled'³⁴ refugees.

³¹K. Kelly, 'Majority of Somali Refugees in Dadaab 'unwilling' to return, medical charity MSF says', *Daily Nation*, 13 October 2016. www.nation.co.ke/news/Majority-of-Somali-refugees-unwilling-to-return-MSF-says/1056-3415224-mg2r9x/index.html. (Accessed 27 November 2017). This paper quotes the head of MSF mission in Kenya, Liesbeth Aelbrecht, as saying 'It is unacceptable that, without any other solution being offered, thousands are essentially being pushed back into conflict and acute crisis-the very conditions that they fled'. MSF was lamenting the repatriation of Somali refugees was immature as Somalia was still not 'safe' for return.

³² The Government of Kenya had earlier blamed the Somali refugees for supporting terrorism before shortly announcing their decision to close down Dadaab refugee camps, hosting thousands of Somali refugees. The Government announced that it will not close down the Kakuma refugee camp in Northwestern Kenya that hosts a majority of Sudanese refugees. Dadaab and Kakuma refugee camps were yet to be closed at the time of compiling this dissertation.

³³ While Kenya blamed the terrorist attacks (especially that at Garissa University where 148 student were killed) on terror cells in Dadaab refugee camp, there is little direct evidence of the group's activities there. See also G. Joselow, 'Somali Refugees in Kenya fear forced repatriation order' *Voice of America*, 27 April 2015. Available www.voanews.com/a/somali-refugee-in-kenya-ready-to-go-home-despite-fears/2736048.html (accessed 27 November 2017)

³⁴This is a term connotatively used to refer to refugees who fled their home country after repatriation as a result of protracted violence or re-emergence of the same. Forced repatriations are likely to produce a 'vicious cycle' of refugees or asylum seekers

Many scholars too, have tended to rely to reports from state and non state actors, risking endorsing them instead of interrogating matters by themselves. Consequently, there are glaring gaps on academic literature as to when, if and how to repatriate refugees.

This dissertation explores repatriation from the perspectives of Kenya, Somalia, the UNHCR and refugees with a view to emphasizing the crucial role of refugee involvement in decision-making. It is hoped that the findings of this dissertation will both contribute to the scholarly literature and also influence state and non-state actors in policy matters vis-à-vis the permanent settlement of refugees.

Among the questions the study seeks to answer include: a) Is Somalia perceived as safe for return of refugees? b) What are the roles of the Kenya-Somalia-UNHCR (tripartite parties) in ensuring successful voluntary repatriation of Somali refugees? c) How would voluntary repatriation of Somali refugees be made refugee-centered, even in the context of Tripartite Agreements? Borrowing examples from other (un)successful repatriations, the study proposes a more refugee-centered approach in the repatriation of Somali refugees, which could broadly apply to Africa and beyond, as a remedy to protracted and emergency refugee situations.

1.3 Proposition

It is proposed in this dissertation that:

1. Refugee participation and inclusivity in decision-making is paramount for successful repatriation.
2. A refugee-centred approach could apply more broadly to other African/regional refugee crises.

1.4 Objectives of the study

In this study, I seek to fulfill the following research objectives:

1. To explore the views of the governments of Kenya and Somalia, the UNHCR and refugees on the safety and security of Somalia as a pre-requisite for repatriation.
2. To examine the roles and responsibilities of the Kenya-Somalia-UNHCR (tripartite parties) in ensuring successful voluntary repatriation of Somali refugees and in promoting stability and security in the region.
3. To determine the level of refugee inclusivity and participation in decision-making on their repatriation.
4. To evaluate challenges associated with the Tripartite Agreement on voluntary repatriation of Somali refugees from Kenya.
5. To extrapolate the ways in which a refugee centred approach to repatriation could apply more broadly to the region and other African refugee crises.

1.4 Key research questions

The key research questions explored in this dissertation are:

1. In what ways are the conditions of safety and security in Somalia perceived by the governments of Kenya and Somalia, the UNHCR and refugees as a requirement for repatriation?
2. How would the tripartite parties ensure successful voluntary repatriation of Somali refugees while promoting stability and security in the region?
3. Why would the Tripartite agreement be difficult to implement without the active initiative, inclusion and participation of the Somali refugees in decision making?
4. What does a more refugee-centered approach, as explored in this case study, tell us about the repatriation of refugees more broadly in Africa.

1.5 Theoretical framework

Elite theory

This dissertation adopts elite theory in general and elite theory specifically in politics around refugee situations. Elite theory provides a distinction between elites and non-elites to advance explanatory constructs that can be assessed empirically for accuracy or at least plausibility. Elite theorists posit that a small minority consisting of members of the economic and political elite and policy planning networks hold the most power and that this power is independent of a state's democratic elections process³⁵. In this study, I look at the process of repatriation and how elites infiltrate this process at the expense of refugees.

³⁵L. Vergara, 'Elites, political elites and social change in modern societies', *Revista de Sociología*, no.28. 2013, p.41-43

Elites play a key role in decision making including in refugee situations.

Among the classical contributors to elite theory are Vilfred Pareto³⁶, Gaetano Mosca³⁷, Robert Michels³⁸ and Wright Mills.³⁹Pareto argues that elites can either be governing elites or non-governing elites. Mosca on his part posits that elites are an organized minority and the masses are an unorganized majority. He divides the world into ruling class and class that is ruled.⁴⁰Mills, on the other hand, identified a triumvirate of power groups' namely political, economic and military elites and argues that they form a distinguishable, although not unified, power wielding body.⁴¹More recently, Schubert, Dye and Zeigler⁴²have argued that public policy does not result from the demands of the people, but rather from elite consensus found in non-profit foundations, special interest groups, and law firms, among others. Plainly put, Dye and Zeigler argue that the strong in society (minority) make decisions on behalf of the weak (majority).

Elite theory characterizes elites (minority) and non-elites (majority) as follows:

a) In every complex and large society, power is distributed unequally and is concentrated in the hands of elites.

³⁶V. Pareto, *The rise and fall of the elites. An application of theoretical sociology*, New Brunswick, New Jersey. Transaction Publishers, 1901

³⁷ G. Mosca, *The ruling class*, Greenwood Press, Westport. 1896, 1939

³⁸R. Michels, *Political parties: a sociological study of the oligarchical tendencies of modern democracy*, Kitchener, Batoche Books,1915, 2001

³⁹R. Mills, *The Power Elite*. Oxford: Oxford University Press, 1956

⁴⁰G. Mosca, *The ruling class*, Greenwood Press, Westport. 1896, 1939

⁴¹R. Mills, *The Power Elite*. Oxford: Oxford University Press, 1956

⁴² L. Schubert, T. Dye and H. Zeigler, *Irony of Democracy: An uncommon introduction to American politics*, United Kingdom: Cengage, 2016.

b) In every complex and large society, the key socio-political distinction is between elites and non-elites.

c) Elite configurations can be said to be key determinants of economic and political success or failure.

d) The social backgrounds of elites are disproportionately those of privilege.

I consider the elite theory appropriate as a theoretical framework to inform this study as the power relationships between elites working through various agencies involved in repatriation is a key determinant of the success or failure of the repatriation process. Although majority refugees are ideally non-elites and may not directly influence policy decisions, which is the domain of the elites, their involvement is crucial as it will determine whether the decisions of policy makers will finally be sustainable in the long run. This framework is useful when considering the role of refugees (ideally perceived as masses or non-elites) in influencing the success of their repatriation process as already determined by the Tripartite parties (minority or elites). The question is whether the terms of the Kenya-Somalia-UNHCR voluntary repatriation agreement (representing elites) is perceived as a true representation of the feelings, perceptions and aspirations of the majority (non-elite) Somali refugees? How far have the political elites in the Government of Kenya, UNHCR and FGS come up with the Tripartite Agreement that provides for voluntary repatriation of Somali refugees without the input of refugees themselves?

The fact that the number of cases where refugees have claimed they were not involved⁴³ in the repatriation process is increasing, or that they were threatened⁴⁴ or duped⁴⁵ into believing that home was (now) safe for return is indeed worrying. One may argue that the Tripartite Agreement signatories, who represent the elites, by virtue of their strategic positions could substantially influence politics in favour of repatriation without refugee input as argued by Higley:

Elites may be defined as persons who, by virtue of their strategic locations in large or otherwise pivotal organizations and movements, are able to affect political outcomes regularly and substantially. Put differently, elites are persons with the organized capacity to make real political trouble without being promptly repressed. They consist not only of prestigious and 'established' leaders, top politicians, important businessmen, high-level civil servants, senior military officers – but also, in varying degrees in different societies, relatively transitory and less individually known leaders of mass organizations such as trade unions, important voluntary associations, and politically consequential mass movements.⁴⁶

The elite consist of those few individuals who wield powers and hold leading positions in the strategic aspects of society. The majority, the masses, only obeys and are guided, controlled and governed by the few⁴⁷. The majority are mostly led by the minority⁴⁸.

⁴³C. Karooma, 'Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda', Working Paper Series No.103, Refugees Studies Centre, University of Oxford, 2014, p.10

⁴⁴C. Karooma, 'Reluctant to Return? The Primacy of Social Networks in the repatriation of Rwandan refugees in Uganda, Oxford, Refugees Studies Centre, Working Paper series no. 103, 2014, pp.4-21.

⁴⁵B. Harrell-Bond, 'Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research', *African Studies Review*, vol.32, no.1, p.56.

⁴⁶J. Higley, J. *Elite theory in political sociology*, University of Texas at Austin, 2008, p.4

⁴⁷C. Okeke, 'Alternatives to the predatory local government', *Arabian Journal of Business and Management Review*, vol.4, no.2, 2014, p.80

⁴⁸ M. López, 'Elite theory', Sociopedia.isa, 2013. DOI: 10.1177/20568460131112

Many elites do not hold formal or legal authoritative powers, but are rather behind the scene, influencing and manipulating overt political and policy actions. It is on the basis of presumptions that the masses are contented and are incapable of challenging the authoritative position of the elite that the elites dominate public policy and its processes.⁴⁹

Besides that, elite theory is a useful framework to enable the explanation of decision-making by powerful actors, and to explore the claim by Menkhaus of the 'otherwise puzzling behaviour of the Somali political, civic and economic actors who promote peace and local policing systems while quietly undermining efforts to revive the state'⁵⁰ Who could these 'powerful' individuals or entities be with such powers to undermine the efforts of the international community to stabilize Somalia for more than two decades now? One could easily conclude that only elites have such financial muscles, skill and power to warrant such deterrence. Elites, perhaps because they are less averse to losses⁵¹, also appear to be more cooperative than the masses. Deducing from elite theory, the study attempts to answer the research questions regarding the decision making process before, during and after repatriation.

⁴⁹D. Arowolo and O. Aluko, 'Democracy, political participation and good governance in Nigeria', *International Journal of Development and Sustainability*, vol.1.no.3.p.800

⁵⁰K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, Vol.31 no.3.p.76

⁵¹E. Hafner-Burton, D. Hughes and D. Victor, 'The Cognitive Revolution and the Political Psychology of Elite Decision Making', *Perspectives in Politics*, American Political Science Association, 2011, p.70

Contemporary democratic elite theory may also be understood as a framework for explaining and understanding decision-making in all its facets, especially in situations of uneven power relationships. It is hoped that this contextually rich empirical case study will also contribute to further theoretical development of this body of theory. Traditionally democratic elite theory has been used to explain relationships between elites and non-elites, but it can also be applied to decision-making within elite groupings.

1.6 Rationale and motivation for the study

As of July 2009, Dadaab refugee complex⁵² - comprising of Hagadera, Dagahaley, Ifo 1 and Ifo2 - was recorded as being the world's largest refugee camp.⁵³ It comprises of majority Somalis with almost all clans represented. Others include South Sudanese, Ethiopians, Ugandans, Congolese, Burundians and Eritreans⁵⁴. This, therefore, implies that Kenya is one of the countries in the world with one of the world's largest refugee burdens. I was motivated to carry out the study as part of my contribution in suggesting a more refugee driven debate on repatriation. Although repatriation lessens the refugee burden to the host state and the international community, it is hoped that this could be successfully done without infringing on the rights of refugees to voluntary repatriation.

⁵² <https://www.unhcr.org/ke/dadaab-refugee-complex>.

⁵³P. Kirui, and J. Mwaruvie, 'The dilemma of hosting refugees: A focus on the insecurity in north-eastern Kenya', *International Journal of Business and Social Science*, vol.3 no.8, 2012, p.165

⁵⁴ <https://www.unhcr.org/ke/figures-at-a-glance>

Secondly, the Dadaab complex in Kenya represents one of the protracted conflicts in Africa having been established in 1991 after the fall of Siad Barre. The international community's engagement with refugees has since the 1990's focused largely on mass influx situations and refugee emergencies, and encouraging large-scale repatriation programmes in high-profile regions⁵⁵. In stark contrast, over two-thirds of refugees in the world today are not in emergency situations, but instead trapped in protracted refugee situations⁵⁶. This therefore means that researchers, academics and policy-makers should give more attention to protracted refugee situations and not just refugees in emergencies and during large influxes. This study, therefore, is timely as it focuses on a protracted refugee situation with a view to building more sustainable refugee repatriation.

Thirdly, the physical security problems that Kenya has faced in the recent past, notably the WestGate Mall Attack in 2013 in Nairobi and the Garissa University attack in 2015 has consolidated the perception that Dadaab refugee camps are being used as a training ground and hideout⁵⁷ for Somali terror militants. Studies by Kirui and Mwaruvie⁵⁸ and

⁵⁵Since the 1990's, the international community has focused largely on refugee emergencies in high profile regions such as the Balkans, the Great Lakes region of Africa and more recently Darfur(Sudan), Chad and Syria. These regions are known to produce millions of refugees. See UN, 'Protracted refugee situations: Millions caught in limbo, with no solution in sight', available at www.un.org/events/tenstories/06/print.asp?storyID=2600(accessed 28 November 2017)

⁵⁶ G. Loescher et al, 'Introduction', *Protracted Refugee Situations: Political, human rights and security implications*, New York, United Nations University Press, 2008,p.3

⁵⁷The Guardian, 'World's largest refugee camp scapegoated in wake of Garissa attack' 14 April 2015 Available at www.theguardian.com/world/2015/apr/14/kenya-garissa-dadaab-scapegoat-al-shabaab(accessed 28 November 2017).The Government of Kenya had termed Dadaab refugee camp 'a nursery for Al Shabaab', before calling for its immediate closure.

that of Kiswii⁵⁹ among others, have maintained that an influx of Somali refugees could have negatively affected Kenya's physical security. In this case the relationship between international refugee flows and national security can be understood as a social construct whereby discourses and practices have shifted refugee flows from a humanitarian idea to a security-oriented idea. Because of this perceived threat, Kenyan anti-terrorist operations have targeted non-nationals, including Somali refugees, perceived by them as a source of terrorism.⁶⁰ The Government's concerns are that terrorists can camouflage themselves as refugees to enter the country and, in so doing, they can hide their activities including those that target refugees for recruitment. Some groups, such as the Al-Haramain Islamic Foundation⁶¹, Al-Itihaad al-Islamiya⁶² which have links with Al-Qaeda⁶³, were carrying out humanitarian work in Somali refugee

⁵⁸P. Kirui and J. Mwaruvie, 'The dilemma of hosting refugees: A focus on the insecurity in north-eastern Kenya', *International Journal of Business and Social Science*, Vol.3.no.8.p163.

⁵⁹ E. Kiswii, 'Refugee Influx and (In)security: Kenya's experience, 1991-2012', Masters Thesis, University of Nairobi, 2013, p.11

⁶⁰ Amnesty International The Impact of Antiterrorism Operations on Human Rights, (Washington DC: Amnesty International), 2005

⁶¹ A charity foundation based in Saudi Arabia that later became a major source of funds to the terrorist groups. It was listed by United Nations Security Council as terrorist group on 13 March 2002. Available [www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/al-haramain-islamic-foundation-\(bosnia-and](http://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/al-haramain-islamic-foundation-(bosnia-and) (accessed 29 November 2017) See also E. Kiswii, 'Refugee Influx and (In)security: Kenya's experience, 1991-2012', Masters Thesis, University of Nairobi, 2013, p.5

⁶² It is an Islamist militant group in Somalia. It is considered a terrorist organization by the United States, United Kingdom and New Zealand. It seeks to establish Islamic caliphates based on strict Islamic Sharia law. Available <https://fas.org/irp/world/para/ogadin.htm> (accessed 29 November 2017)

⁶³ It is a militant Sunni Islamist multinational organization founded in 1988 by Osama bin Laden, Abdullah Azzam and several other Arab volunteers who fought against the Soviet invasion of Afghanistan in the 1980s. After the Cold War the group seem to be pushing for the establishment of Islamic states based on strict Islamic Sharia law. Available at www.un.org/sc/suborg/en/sanctions/1267/fact-sheet-on-updating-list

camps where they have established close links with the Somali refugees consequently smuggling dangerous weapons to Kenya via the Kenya-Somali border.⁶⁴

Yet, despite all this, a permanent solution for protracted refugee situations must be sort. It is not acceptable, as former High Commissioner Ruud Lubbers said in 2001, that refugees spend years of their lives in confined areas.⁶⁵ Yet the political failure to find durable solutions for refugees lead to precisely the kinds of protracted situations that degrades the displaced. Unable to return to their homeland, settle permanently in their country of first asylum or move to a third state, many refugees find themselves confined indefinitely to camps or holding areas, often in volatile border zones.⁶⁶Such restrictive conditions are a denial of rights under the 1951 UN Refugee Convention⁶⁷ and a waste of human talent.⁶⁸Furthermore, the prevalence in prolonged refugee situations of idleness, aid-dependency, a legacy of conflict and weak rule of law can induce fresh cycles of violence,

⁶⁴G. Loescher and J. Milner (eds.), *Protracted Refugee Situations, Domestic and International Security Implications*, London: IISS, 2008)41. E. Kiswii, 'Refugee Influx and (In)security: Kenya's experience, 1991-2012', Master Thesis, University of Nairobi, 2013.p.5-6

⁶⁵R. Lubbers, High Commissioner for Refugees, Statement to the European Conference on Migration, Brussels, 2001.

⁶⁶J. Crisp, 'No Solutions in Sight? The Problem of Protracted Refugee Situations in Africa', *New Issues in Refugee Research*, Working Paper No. 75, UNHCR, Geneva, 2003.

⁶⁷The 1951 United Nations Convention Relating to the Status of refugees is the centerpiece of international refugee protection. The Convention entered into force on 22 April 1954 and it has been subjected to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention. Among its notable principles is that of non-discrimination, non-penalization and *non-refoulement*. The Convention defines a refugee as 'a person who owing to a well-founded fear of being persecuted for reason 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 the country'.

⁶⁸M. Smith, 'Warehousing Refugees: A Denial of Rights, a Waste of Humanity', *World Refugee Survey*, 2004, pp. 40-1.

threatening human security.⁶⁹ In this regard, it is imperative that the search for durable solutions be intensified.⁷⁰

It is against this backdrop that the Government of Kenya intensified calls for repatriation of Somali refugees in Dadaab, Northeastern Kenya culminating in the signing of the Tripartite Agreement (TA) signed between Government of Kenya, FGS and UNHCR, as a roadmap for the repatriation of Somali refugees. The need to establish the roles, contributions and aspirations of Somali refugees in the TA motivated the study with a view to capture the views of ordinary Somali refugees in this process of repatriation.

1.7 Contribution of the study to the repatriation debate

No doubt the repatriation debate and the role of the refugees therefore have been on the agenda for some time now. Perhaps the assertion by Malloch-Brown⁷¹ on the need to include refugee views in all refugee-related matters, including repatriation, makes this study part of the answer to his call. As far as Malloch-Brown is concerned,

I would hope that experts will never again have the effrontery to sit down together to discuss refugees without refugees being present, but I doubt it. Refugee work remains, perhaps, the last bastion of the ultra-paternalistic

⁶⁹A. Helton, *The Price of Indifference*, Oxford University Press, Oxford, 2002, pp. 154–62.

⁷⁰UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004.

⁷¹ Mark Malloch Brown is a former United Kingdom government minister (2007-2009) and United Nations Deputy Secretary General (2006) as well as development specialist at World Bank and the United Nations (1994-2005).

approach to aid and development. It is hard to think of another area where the blinkered nonsense of the 'we know what's best for them' approach survives so unchallenged.⁷²

While Mark Malloch-Brown may have made this tough observation more than two decades ago, the role of the refugees, especially in the repatriation process, remains peripheral or non-existent at all. Although this study underscores the need to bring refugees on board while making decisions concerning them, other scholars, like Anon, are of the view that governments are not expected to engage in a discussion with refugees as their main role is political decision-making and it should remain just that. He states the following.

I believe that if you want political action, you must get governments together. Their deliberations will be the springboard for action. In my opinion, it is quite unrealistic to expect them to meet together with individual refugees (or groups representing refugees) and NGOs [non-governmental organizations]. Where the adoption of recommendations for political action is concerned, it does not work like that. Eagles don't consort with sparrows. It's a law of nature.⁷³

However, Anon's view of exempting governments from engaging refugees (or their representatives) seems to be working on a premise that political decision-making does not require a process of consultation. This view is not only untenable, but tends to support the 'big man syndrome'⁷⁴ of isolating the less privileged refugee (as eagles don't

⁷² Mark Malloch-Brown, as quoted in Harrell-Bond and Karadawi (1984).

⁷³ Anon as quoted in Harrell-Bond (1989) p.41.

⁷⁴The big man syndrome within the context of political science refers to corrupt, autocratic and often totalitarian rule of countries by a single person. Disregarding refugees in decision making in this case is

consort with sparrows). The fact that Anon, and possibly others, think that this is the law of nature does not mean that this dominant view should be left unchallenged. This study challenges this view by propounding refugees as a solution to their plight, and the state and non-state actors as mere 'third parties'. Borrowing heavily from the elite theory, the study suggests that 'might is not always right'. The fact that policy makers can decide on crucial matters pertaining to refugees , without refugee input or resistance, does not legitimize the process. The 'weakness' of the refugee should not be mistaken as ignorance, ineptitude or inability, but rather as a temporary limitation as a result of unfavourable circumstances both in the home and host countries.

Academically, there are glaring gaps in the literature regarding how, and when, refugees should be repatriated. Active refugee participation in the repatriation process is missing and in most cases tends to be overlooked, or not given the weight it warrants. This study endeavours to contribute to filling this enormous vacuum.

Finally, many scholars in refugee issues have tended to rely on humanitarian agency reports or state reports in their research hence find themselves endorsing instead of interrogating them. Research on refugee matters, especially by academics should be more of ground-led with a view to seeking information from the refugees themselves. In order

promoting the 'big man's syndrome'-which is unacceptable. It is highly personalized and restrained little by modern institutions. See also M. Meredith, 'The fate of Africa: A history of fifty years of independence' New York, New York Public Affairs, 2005.

to avoid deducing the findings largely from already existing reports on refugees, the study draws extensively from the field findings. The study introduces a paradigm shift in the approach to refugee resettlement process(es) that focuses on the views of refugees as determinants of their successful repatriation.

1.8 Reflection upon research methodology

In this study I adopt an interpretative meta-theory of knowledge and a corresponding qualitative methodology. A research methodology is an arrangement of conditions for the collection and analysis of data in a manner that aims to combine relevance with the research purpose⁷⁵. In this particular study I adopt a case study approach, as a basis for collecting and analyzing data. A case is an entity or specific bounded system where it is possible to identify that some features are within the case while others are outside, but are significant as context⁷⁶. The study is a case study because it focuses upon refugees located in Dadaab refugee camp, rather than any other refugee location.

While the researcher may have a variety of purposes of study and research questions, the general objective is to develop as full an understanding of that case as possible. Because the refugees are a people of concern to international bodies like the UNHCR, the divergent interests of a home country, a host country, refugees and the international community makes this group of people complex and dynamic. Because of these complexities, a case study is best placed as it suits 'an empirical inquiry that investigates

⁷⁵ D. Kombo. &D.Tromp, *Proposal and Thesis Writing: An Introduction*. Nairobi: Pauline Publication Africa, 2006.

⁷⁶E.Stake, 'Qualitative Case Studies' Denzin, N.K and Lincoln, Y.S(eds)*Sage Handbook of Qualitative Research*.3rd Ed. London, Sage,2005.p.1.

a contemporary phenomenon within its real life context, especially when the boundaries between the phenomenon and the context are not clearly evident⁷⁷. Assuming a deductive approach, I use elite theory to test hypotheses based on the in-depth information from the case findings.

Being qualitative research, the emphasis is upon the specific and rich findings from the case, rather than the number of cases. According to Denzin and Lincoln, a qualitative approach:

Implies an emphasis on the qualities of entities and on process and meanings that are not experimentally examined or measured (if measured at all) in terms of quantity, amount, intensity or frequency. Qualitative researchers stress the socially constructed nature of reality, the intimate relationship between researcher and what is studied, and the situational constraints that shape inquiry.⁷⁸

In a case study, the researcher recognizes that s/he is not overly concerned with trends and consistencies for the purposes of generalization, but rather a detailed explanation understood through the eyes of the participants in their context. In a nutshell, a case study is an ideal form of qualitative research, whereby an in-depth study of an individual unit is used to gain in-depth understanding of the participants, focusing on the process

⁷⁷K. Yin, *Case Study Research Design and Methods* (3rd Ed). London: Sage Publications, 2003. p.14

⁷⁸K. Denzin, & Y. Lincoln, Introduction: The Discipline and Practice of Qualitative Research, in N. K Denzin and Y. S. Lincoln, (eds.) *The Sage Handbook of Qualitative Research, 3rd Ed.* Thousand Oak, CA: Sage Publications, 2005, p. 10.

rather than outcome.⁷⁹In such research, there is a focus upon experiential knowledge of the case and close attention is paid to the influence of its social, political and other contexts. Consequently, a case study is best suited in this study as it brings to light the dynamic social, political and economic contexts regarding the challenges associated with the permanent settlement of refugees.

While the natural sciences are looking for consistencies in the data in order to deduce 'laws'(nomothetic), the social sciences often deal with the actions of the individual(ideographic).As noted by Crotty,

Our interest in the social world tends to focus on exactly those aspects that are unique, individual and qualitative, whereas our interest in the natural world focuses on more abstract phenomena, that is, those exhibiting quantifiable, empirical regularities.⁸⁰

In qualitative research, the researcher is prepared to sacrifice quantity for detail.⁸¹This helps the researcher to acquire detailed in-depth information within its social and political context, rather than shallow in-breadth information.

⁷⁹J. Creswell, *Qualitative inquiry and research design: Choosing among five approaches* (2nd ed.). California, Sage Publications, 2009

J. Gerring, *Case study research: Principles and practices*. New York: Cambridge University Press, 2007.

R. Burns, *Introduction to research methods* (4th Ed).London: Sage Publications, 2000.

⁸⁰M. Crotty, *The Foundation of Social Research: Meaning and Perspectives in the Research Process*. London, Sage, 1998, 68.

⁸¹ D. Silverman, *Doing Qualitative Research 2nd*, London, Sage, 2005

While inquiring about the subject matter of the permanent settlements of Somali refugees and the dynamics thereof, the researcher recognizes that since he is not interested in any trends and consistencies for purposes of generalization, but rather a detailed explanation from a few cases, it was prudent to employ the interpretive approach. This ensured the avoidance of a boring repetition from large samples and further that each individual case was analyzed intensively to an extent that it contributed significantly to the findings of the study. As such, the research, as a set of interpretive activities that privileged no single methodological *practice* over another as it utilized multiple interpretations, methods and techniques⁸²In order to understand people's outlooks, perceptions and experiences, we must be close to groups and look at the world from their view points. While this may be deemed subjective (by non-interpretivists), subjectivity in qualitative research is not seen as a failure that needs to be eliminated, but as an essential element of understanding.⁸³

Dadaab refugee camps comprise an enclosed settlement near the Kenyan frontier in Northeastern Kenya. As such, the key informants and participants that were interviewed are easily identifiable. Because case studies work with fewer participants in order to emphasize intensity rather than extensity, the researcher employed stratified purposive sampling alongside snowball sampling, targeting key informants in the government agency dealing with refugees, UNHCR, NGOs, refugees and ordinary Kenyan citizens.

The researcher engaged 25 key participants in extensive interviews (using semi-

⁸² J. Mason, *Qualitative Researching (2nd Ed.)* London, Sage Publications, 2002

⁸³E. Stake, *The Art of Case Study Research*. London, Sage Publications, 1995

structured open-ended questions) and conducted focus group discussions. Purposive sampling targeted politically important cases (such as refugee leaders and local administrators). It also utilized homogenous sampling targeting participants in focus group discussions (such as officials of government, UNHCR and NGOs).

Having previously worked in the refugee camp for 3 years as a humanitarian worker, it was relatively easy to mobilize individuals who participated in this study on the basis of informed consent. They included refugees, Kenyans (in Dadaab but not affiliated to NGO's), NGO workers, security agencies (Kenyan Police and Kenya Defense Forces (KDF), and UNHCR officials in Dadaab.

All the 25 respondents were individually interviewed and their responses transcribed. They included: 15 refugees, 2 Department of Refugee Affairs (DRA) officials, 1 police, 1 Kenya Defence Force officer, 2 Kenyan businessmen, 2 Kenyan teachers and 2 NGO staff (1 international and 1 national staff). After the interviews, 3 Focus Group Discussions (FGD) were conducted as follows: FGD 1 (5 refugees); FGD 2 (2 NGO staff and 3 refugees) and FGD 3 (1 DRA staff, 1 police, 1 national NGO staff, a teacher and businessman).

In keeping with a qualitative approach, a variety of methods were used during the design phase, including desk and field based research, a literature review, key informant interviews, and empirical analyses of existing data. The researcher also drew upon

international, Kenyan, and Somali legal documents and legislative acts on refugees and displaced people. Digital and print media reports were also reviewed as they contained the most recent reports and provided various case scenarios.

In analyzing the data from the field work, it was first transcribed from the audio recordings to script form. This generated a substantial amount of text (for example every hour generated several pages of raw data). The researcher then re-familiarized himself with the data to draw out the themes contained in the data. After re-familiarization with the data, the researcher coded (labeled) the chunk of data to form of headlines and categories. Because coding involves phases, the coding approach went through open, axial and selective coding respectively. In the open coding phase, the researcher is interested in distinctive issues and conceptualization. In the axial phase, the researcher merged similar or related codes, downgrading some while upgrading others in order to elicit themes and sub-themes. In the final phase of selective coding, the researcher related the themes with the corresponding research questions.

Ethical considerations were accorded high importance in the study. Participants' names were kept confidential and comments anonymous. Names of respondents (especially refugees) cited are pseudo names hence protecting their privacy.

1.9 Scope and limitation

The study began by indicating the general scope to be covered. In this specific interdisciplinary study, the focus is repatriation in protracted refugee situations and the

role of the refugee stakeholders in general, and the refugees in particular. Drawing from repatriation experiences in Tanzania, the Democratic Republic of Congo, Pakistan and other select countries, this dissertation emphasizes the need for active refugee involvement in the repatriation process. The reasons for the need to repatriate, integrate or resettle as a permanent solution to the refugee problem is also highlighted, as argued by many refugee hosting countries.

This study discusses the Tripartite Agreement signed by Government of Kenya, the Federal Government of Somalia and the UNHCR on 10th November 2013 with a view to explaining the role of the refugees in the TA. The perception of Somali refugees upon safety and security in Somalia, the role of the tripartite parties and the refugees in the repatriation process is also discussed.

Even though resettlement and integration are part of the solution to the refugee problem, the study focuses on repatriation as the most appropriate solution when dealing with large numbers of refugees during emergencies and in protracted situations.

The area of study is a limiting factor, where the focus is on the repatriation process of Somali refugees in Dadaab refugee camps in Northeastern Kenya. The Tripartite Agreement signed by Kenya, Somalia and UNHCR as the roadmap to the repatriation process is discussed in detail in this study. Other tripartite agreements signed elsewhere

are used as a basis of understanding this TA and drawing the necessary lessons and trends.

While many tripartite agreements are similar in terms of their provisions in the repatriation process, refugee situations are dynamic to particular circumstances. The findings of this study, regarding the tripartite agreement between Kenya, Somalia and UNHCR may consequently differ significantly if the study was to be done elsewhere. Results could therefore be taken as a general trend in repatriation circumstances and specifically regarding Somali refugees Kenya in Dadaab camps. Besides that, there is only scarce academic literature on the repatriation of Somali refugees in Kenya after the Tripartite Agreement that was signed on 10th November 2013. The contemporary nature of this study, was also a limiting factor as academics are yet to fully delve into the matter. Contemporary references especially from published academic works were therefore rare. Consequently, this dissertation draws upon historical examples in order to situate this case within the broader trend of involuntary repatriation movements and to exemplify the consequences of forced and premature repatriation in relation to the current situation under study.

The short time available for this study, financial limitations and the challenge of movement in the larger Dadaab camps, as a result of safety and security restrictions, limited the study in one way or another. Although there is no agreement among scholars

on what constitutes a failed⁸⁴/failing state, Somalia may be considered as a failed/failing state. Acknowledging this debatable term, this dissertation uses failed state in reference to Somalia. It is still recovering from the ravages of civil war and is still dangerous, even for military personnel. Consequently, the researcher utilized reports from various humanitarian agencies in an attempt to describe the actual state of Somalia. Even so, these reports acknowledge too that most parts of Somalia are inaccessible and large swathes of land are still under the control of the militia. This may have limited the study as the researcher did not have the benefit of corroborating this information with any empirical findings as this was not practically possible to carry out.

In conducting the study, it was not unexpected that many respondents were hesitant for the interviews to be recorded and preferred that the interviewer take notes from the interviewee. Those who chose not to be recorded opted for this option after being informed of their right either to consent or decline to be recorded. In this regard, their wish was respected. In interviewing the security personnel, they indicated their fear of contradicting the Government of Kenya position concerning repatriation, which may have been a limiting factor in the free expression of their views. This also applied to UNHCR officials who express their concern of not wanting to contradict the Government of Kenya position insisting that they would not want to be drawn into the politics of repatriation. To protect the identity of the informants, anonymity was offered to them.

⁸⁴ A. Simmons, A & D. Tucker, The misleading problem of failed states: a sociogeography of terrorism in the post 9/11 era". *Third world Quarterly*, Vol. 28, No.2, 2007, pp 387-401.

To protect their identities, the researcher gave pseudo names to all refugee respondents and other respondents who, because of their sensitive positions, preferred to remain anonymous. Names of refugees appearing in this dissertation, therefore, are not their actual names. This assurance made the respondents freer to be candid in their responses.

1.10 Definition of terms as used in dissertation.

The following terms and their meanings as used in the study are hereby defined:

Refugee: A refugee is any person 'who, owing to a well-founded fear of being persecuted for reason 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 the country(The 1951 UN Convention Relating to status of Refugees).It may also include those persons who 'owing to external aggression, occupation, foreign domination or events seriously disturbing public order' in the home country are compelled to flee abroad(1969 OAU Convention, Governing Specific Aspects of Refugee Problems in Africa).

Repatriation: To return to one's country. Refugees return must always be voluntary. The 1951 Refugee Convention Relating to the Status of Refugees envisages voluntary returns according to the principle of *non-refoulement*. Involuntary returns, however, do happen when refugees are coerced either directly or indirectly to return.

Sustainable repatriation: For purposes of this thesis, sustainable repatriation is one that is done after conditions at home have improved. Refugees then repatriate voluntarily after participating fully and agreeing to the decision to return. Hence refugees repatriate in (to) safety and in dignity. In this case, there is a limited chance that the returnee will flee again. This is the best form of repatriation. Most voluntary repatriations are sustainable.

Unsustainable repatriation: These are repatriations that are rushed and may happen even if conditions at home that necessitated the flight have not changed. As a result, returnees may be forced to flee again hence making the repatriation process unsustainable. Most involuntary returns are unsustainable and may lead to a vicious circle of 're-cycled' refugees

Resettlement: To be granted citizenship or permanent residence in a third country. It is to be resettled in another country, other than the country of origin and the first country of asylum. Less than 1% of total number of refugees in the world benefit from resettlement.

Integration: This is where refugees are incorporated into the political, social, economic or cultural system of the country of asylum. Integration, and the rights thereof, may be partial or full. When integrated refugees enjoy all rights as citizens of a host state then that can be termed as full integration. On the contrary, if integrated refugees enjoy some

rights and are denied others, (for instance, being denied right to vote) then refugees can be termed as partially integrated.

Asylum: The protection granted by a state to someone who has left their native country as a political refugee. One is termed as a refugee after crossing his/her national border and welcomed by host state as asylum seeker.

Asylum seeker: A person who has left their home country as a political refugee and is seeking asylum in another.

Dadaab Refugee Camp: The world's biggest refugee camp, hosting the largest Somali population outside Somalia. Dadaab in North Eastern Kenya is a group of five settlements that have been home to refugees since 1991 and comprise of Hagadera, Dagahaley, Ifo I, Ifo II and Kambios. A 'camp' is a temporary shelter in accommodation comprising huts, tents, or other structures. It denotes a planned and organized area for displaced persons to seek protection and where they will be provided with access to essential services such as food, water, health care and sometimes education.

1.11 Structure of the dissertation.

The themes of this dissertation are divided into the following chapters.

Chapter one provides an introduction to the study, the problem statement, hypothesis, objectives, theoretical framework and the rationale and motivation behind the study. The

contribution of the study to knowledge, a reflection upon the research methodology selected, the scope and limitations of the study and a definition of key terms as used in the study are provided. This provides the parameters and scope of the study, keeping it focused and concise.

Chapter two provides a comprehensive review of the literature on the research topic. This chapter places the study in the repatriation debate highlighting the current gaps in knowledge and the areas to which the study contributes. In this chapter, I trace Kenya's relationship with Somalia and why it is characterized by suspicion and mistrust. The 1951 Convention and the 1967 Protocol is also analyzed in detail and I suggest a review of these in line with emerging refugee challenges. I argue that refugees are key players in refugee matters and as such need more attention from researchers. As it is at the moment, the crucial role of refugees seems to have been usurped by various stakeholders in the refugee sector, and this ought to change. I claim that refugees are used as scapegoats by host states when faced with various political, economic and social challenges.

Chapter three provides an exploration of the perceptions of the governments of Kenya and Somalia, the UNHCR and refugees on the safety of Somalia as a pre-requisite for repatriation. I argue that refugees will only accept voluntarily repatriation once they perceive that it is safe to do so. Since the idea of 'safety' is relative, I conclude that it is neither possible to objectively declare Somalia as 'safe' nor 'unsafe'. Various refugee stakeholders have declared Somalia un(safe), depending on their perceived indicators

and underlying interests. The Government of Kenya for instance is likely to advance the narrative that Somalia is safe for return as it serves its interest of wanting Somali refugees out of the Kenya.

Chapter four explains and analyzes the roles and responsibilities of the Kenya-Somalia-UNHCR (tripartite parties) in ensuring successful voluntary repatriation of Somali refugees and in promoting stability and security in the region. Since the stability of Somalia affects that of the entire Horn of Africa and East Africa, players in the Tripartite Agreement need to meticulously discharge their mandate while undertaking the repatriation process to avert further crises. In this regard, I conclude that all stakeholders need to actively be engaged in repatriation decision-making process so as to produce a sustainable solution. Refugees, especially, need to own the process and should be treated as such. I further claim that there is a big difference between the theory of the TA and its practice.

Chapter five critically evaluates the challenges associated with the tripartite voluntary repatriation agreement for Somali refugees with a view to promote refugee-centered initiatives, inclusivity and participation in decision making. As the study asserts, refugees have been relegated to the periphery, yet repatriation is all about refugees. This needs to change. I conclude that unless refugees are actively involved in decision making regarding repatriation, the process will not be sustainable and in the long run may even

cause further refugee crises. Failure to include refugees in decision making delegitimizes it among refugees.

Chapter six extrapolates, to the African continent, the possibility of a refugee-centered approach to repatriation. While refugee situations are unique and dynamic across the African continent, a refugee centered approach will safeguard against such dynamics and provide acceptable solutions, especially to the refugees. I conclude that there is a need to support refugee initiatives on repatriation as this will form a good basis for 'home-grown' solutions. Refugee initiatives minimize resistances from host states, home countries and even UNHCR as it creates common ground on refugee solutions. I suggest that the key focus should shift from that of refugee plight to that of addressing the reason for their flight.

In Chapter Seven the findings of each chapter are brought together into a conclusion. In a summary, all decisions, prior, during, and after repatriation should focus on the refugee interests as the centerpiece of such decision process(es). Recommendations are made, based on the study findings. There need be a closer working relationship between the Governments of Kenya, Somalia and the UNHCR to avoid what appears to be 'reading from different scripts'. Refugees ought to be actively involved in the process of decision making regarding repatriation to encourage a sense of ownership and belonging and to avoid possible resistance. Despite the dynamic interests of different refugee actors, a

common ground can be reached based on common interests which will facilitate refugee based solutions.

In the next chapter, chapter two, I examine existing literature on there fugee crisis in Kenya, Africa and selected cases globally.

CHAPTER TWO:

LITERATURE REVIEW

In this chapter I explore literature about Somali refugees, Somalia and the UNHCR. To contextualize the subject of repatriation, I trace the developments in Dadaab refugee camps since its inception in 1991. The relationship between Kenya and Somalia is also reviewed in detail. Further, the UN 1951 Convention regime is also examined together with the subsequent protocols of 1967 that sought to expand its mandate. The Organization of African Unity Convention, Governing Specific Aspects of Refugee Problems in Africa of 1969 is also explored. Security challenges associated with hosting refugees are further discussed. The study establishes that often times refugees are relegated to the periphery in matters affecting them including repatriation. It is also established that most available literature regarding refugees are by humanitarian organizations and calls for academic research is suggested.

2.0 Definition of refugee and historical background.

According to the 1951 United Nations Convention Relating to the Status of Refugees:

A refugee is any person 'who, owing to a well-founded fear of being persecuted for reason 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 the country'⁸⁵.

⁸⁵ The 1951 UN Convention Relating to Status of Refugees, 28 July 1958, United Nations Treaty, Vol. 189 No. 2545, p. 137.

While this may have been a suitable definition in 1951, this definition was later to be revised by various regional instruments to suit their various emerging circumstances. For example, the Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional instrument adopted by the Organization of Africa Unity (OAU) in 1969, expands the UN definition to include people fleeing external aggression, internal civil strife, or events seriously disturbing public order in African countries⁸⁶.

Regionally, this framework accepted the definition of the 1951 Refugee Convention and expanded it to include those compelled to leave their country owing to external aggression, occupation, foreign domination or events seriously disturbing public order. At the time of adoption, the concern of the African states was in regard to refugees from territories that were still under colonial rule or occupation.⁸⁷ The African Union's definition also recognizes non-state groups as perpetrators of persecution, and does not demand that a refugee shows a direct link between herself or himself and the future danger. It is sufficient that the refugee considers the harm sufficient to force her/him to abandon their home.

Some scholars view the refugee definition as envisaged by the 1951 UN Convention above as limited as it overlooked other reasons that may necessitate forced migration, like

⁸⁶The Organization of African Unity Convention, *Governing Specific Aspects of Refugee Problems in Africa*, 10th September 1969, OAU Document CM/267/ Rev.1.

⁸⁷Okoth-Obbo, G. (2001). Thirty years on: A legal review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. *Refugee Survey Quarterly*, Vol. 20, No. 1

social and economic rights abuses. For example, as Hyndman⁸⁸notes, it was intended to apply primarily to refugees in post WWII Europe. Significantly, the 1951 Convention had minimized social and economic reasons for flight in determining the definition of a refugee, factors that may be more relevant in refugee-producing countries today than they were in post-war Europe. In Africa for example, drought and famine may cause the mass exodus of ‘economic’ refugees. This happened in the 2011/2012 famine that forced 150,000 Somali refugees to cross the border into Kenya and became refugees in Dadaab.⁸⁹

Indeed, it is virtually impossible to distinguish between a political and an economic refugee since the dangers inherent in Africa means that economic rights are frequently violated which puts people in danger. In Africa, political power is often used as a means of accumulating wealth. Those not in power are frequently marginalized, and their economic livelihoods⁹⁰ ruined, leading to economic refugees.

The 1951 Convention Relating to status of refugee does not recognize economic or social refugees as it limits its definition of refugee to one fearing political persecution⁹¹.

⁸⁸J. Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*, Minneapolis, University of Minnesota Press, 2000.p.8

⁸⁹Refugee Consortium of Kenya(RCK), *Asylum Under Threat – Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor*, Nairobi, RCK with the support of Danish Refugee Council 2012,.p.7

⁹⁰N. Cheeseman, ‘Re-evaluating multiparty politics in Africa on International Democracy Day’, *Daily Nation*, 17 September 2017. Available www.nation.co.ke/oped/opinion/Re-evaluating-multiparty-politics--in-Africa-/440808-4098662-11175gn/index.html(accessed 29 November 2017)

⁹¹The 1951 UN Convention Relating to Status of Refugees, 28 July 1958,United Nations Treaty, Vol. 189 No. 2545,p. 137

Attempts by developing countries to push for inclusion of socio-economic rights into a UN charter at the Bandung⁹² conference came under stiff resistance by the states in the industrialized developed world. That notwithstanding, refugees should however be treated as such regardless of the reasons of the flight. The complexities of this are now seen in the way in which the rights regime is practiced, rather than theorized.

Political and economic exclusion in the global arena, too, is not a novel idea. Africa, for instance, has in the recent past been pushing for an African representation⁹³ in the coveted 5 member United Nations Security Council (UNSC) with veto powers. Citing exclusion on security matters, Africa is seeking to have a bigger say in determining security issues globally.

Under the international refugee law, one is only recognized as a refugee after entering another country. People fleeing internal or external aggression, but still within their national borders, are, on the other hand, referred to as Internally Displaced Persons (IDPs).

⁹² The Bandung conference was the first large scale Afro-Asian conference which took place on April 18-24, 1955 in Bandung in Indonesia. The conference aimed at promoting economic and cultural cooperation and to oppose colonialism or neocolonialism by any nation. Further details on, 'Final Communique of the Asian-African Conference of Bandung (24 April 1955)'The Ministry of Foreign Affairs, Republic of Indonesia (Ed.) *Asia-Africa speak from Bandung*Jakarta, 1955, pp.161-169.

⁹³United Nations, 'African Representation, future of veto power, inter-governmental process figure prominently in General Assembly Annual Debate on Security Council Reform', GA/11715 30 October 2015, General Assembly plenary, seventieth session,43rd&44th (AM &PM) Available www.un.org/press/en/2015/ga11715.doc.html(accessed 29 November 2017). See also G. Phiri, 'African Nations push for permanent UNSC seat', Aljazeera, 26 September 2013. Available www.aljazeera.com/indepth/features/2013/09/african-nations-push-for-permanent-uns-2013924133231925482.html

The 1951 United Nations Convention Relating to the Status of Refugees was focused on millions of refugees, who, at the time, had been displaced by the Second World War that had ravaged Europe between 1939 and 1945. Many countries at the time sympathized and empathized with the refugees hence many got a warm reception in their countries of refuge. Though refugees were received well in their countries of asylum in the late 1940's and early 1950's, this willingness was short-lived and it soon faded away with prolonged stays⁹⁴. Host countries have become reluctant to welcome refugees because of the fear that the refugees are no longer seen as a short-term challenge, as was earlier thought in the 1940's during the Second World War. The unquestionable assumption in the 1940's was that refugees were in their host countries temporarily and that they would go back to their home countries as soon as the Second World War ended.⁹⁵ As a result they received immense sympathy. For instance, when Palestinian refugees began flooding into their neighbouring Arab states as of spring of 1948 they received a warm welcome.

The prolonged refugee stay however put undue strain on already fragile economies and attitudes in the host countries began to shift⁹⁶. In Africa, the earlier responses by African countries to the plight of refugees were characterized by immense sympathy and warm

⁹⁴O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170. This is example of Palestinian refugees in Egypt.

⁹⁵O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009),170.

⁹⁶O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170.

welcome⁹⁷.As refugee situations became more protracted in nature, host states became reluctant to host refugees as the problem was seen as long-term and hence complex. Today, more than 7.2 million⁹⁸ refugees are trapped in protracted refugee situations. Some, like Milner and Loescher⁹⁹even argue that the average length of a refugee or IDP's displacement is now approaching 20 years.

Hathaway attributes the shift in policy as occasioned by the changing context from that which it was initially contemplated in the mid 20th century. The convergence of interests that motivated the assimilation of refugees in host countries has largely withered away with time¹⁰⁰. In Africa, the period beginning in the late 1980s and culminating in the 1990s, was marked by a shift in refugee policies, with less incentive on the part of states to receive refugees, sometimes rejecting them at the frontier, forcibly returning them or refusing to offer meaningful protection to those who manage to enter their territory¹⁰¹. From this policy shift, refugees are no longer welcomed nor celebrated. Writing on foreigners (refugees or economic migrants) in South Africa, for example, Landau argues that, '...non-South Africans — *makwerekwere*¹⁰²in local vernacular — serve a dual purpose.

⁹⁷P. Kirui, & J. Mwaruvie, ' The dilemma of hosting refugees: A focus on the insecurity in north-eastern Kenya', *International Journal of Business and Social Science*, vol.3,no.8, p.163..

⁹⁸UNHCR, *Sixty Years and Still Counting: Global Trends 2010*. <http://www.unhcr.org/4dfa11499.pdf>.2011.p3

⁹⁹J. Milner, and G. Loescher, *Responding to protracted refugee situations: Lessons from a decade of discussion*. RSC Policy Briefing Paper No.8.2011.p.3.

¹⁰⁰ J. Hathaway, 'Temporary Protection of Refugees: Threat or Solution', in Handmaker, J. et al (eds.) *Perspectives on Refugee Protection in South Africa*. Pretoria: Lawyers for Human Rights, 2001.pp41-49.

¹⁰¹ J. Hathaway, J. 'Temporary Protection of Refugees: Threat or Solution', in Handmaker, J. et al (eds.) *Perspectives on Refugee Protection in South Africa*. Pretoria: Lawyers for Human Rights, 2001.pp41-49.

¹⁰²Makwerekwere translates to 'other other'.

First, as scapegoats, they help preserve the post-apartheid project's legitimacy by providing a convenient explanation for widespread crime, disease and unemployment¹⁰³. Negative attitude of South Africans in Johannesburg towards foreigners is replicated in almost all parts of the world where refugees and migrants are no longer celebrated.

2.1 Implications of the historical relationship between Somalia and Kenya.

Historically, Kenya has had antagonistic relationship with Somalia long before Somali refugees sought asylum in Kenya in 1991.

The Republic of Somalia is itself a union of the former British and Italian Somalilands which emerged into sovereign statehood as one state in 1960. Since then, the basis of Somalia's foreign policy has been the "liberation" and unification of the Somali-inhabited territories. In the early 1960s, Somalia indicated that she was ready to join the East African Federation (which had been proposed by Tanzania, Uganda and Kenya) but only when the Somali question in Kenya had been satisfactorily solved¹⁰⁴

¹⁰³ L. Landau, 'Transplants and Transients: Idioms of Belonging and Dislocation in Inner-City Johannesburg', *African Studies Review*, Vol. 49, No. 2, 2006, p.127.

¹⁰⁴S. Makinda, 'Conflict and the Superpowers in the Horn of Africa', *Third World Quarterly*, Vol. 4, No. 1, 1982, p.97. Somalia's foreign policy has been focused upon the 'liberation' and unification of the Somali-inhabited territories, especially in Kenya and Ethiopia. Though unsuccessful, their liberation military campaign in Kenya started in 1963 and ended in 1967. Their claim in Kenya is over the former North-Eastern Province currently comprised of Garrisa, Wajir and Mandera, counties that are occupied by Somalis.

According to the Somali leaders at the time, since colonial divisions of Africa are an archaic legacy which has little relevance for modern African nationalism, the Somalis cannot be considered fully independent 'until that legacy is eradicated and all Somalis are united under a single political jurisdiction'¹⁰⁵. At the 1963 Pan African summit the Somalis maintained that all Somali people were,

...members of a single Somali nation. Somali is our language, spoken from the Gulf of Aden to the Northern Frontier District [of Kenya]. Islam is our culture, pastoralism our way of life. We want to reunite with our brothers with whom we can evolve an administration suited to our way of life¹⁰⁶

Somalis in Kenya had earlier indicated in a 1962 British-supervised referendum¹⁰⁷, that they wanted to join Somalia when Kenya gained independence in 1963. When Somalia obtained independence in 1960, ahead of Kenya, it supported a political party, the Northern Province Peoples' Progressive Party, which campaigned for a greater Somalia that would unify the ethnic-Somali population in all the countries that neighbor Somalia.¹⁰⁸ Using this argument, Somalia maintains that the Somalis in Kenya and

¹⁰⁵J. Boyd, 'African boundary conflict: An empirical study', *African Studies Review*, vol.22.no.3. 1979.p2

¹⁰⁶ A. Ajala, *Pan Africanism*, New York, St. Martins, 1974,p.150

¹⁰⁷ The referendum was to ascertain and report public opinion in the Northern Frontier District (NFD), later called the Northeastern Province (NEP) regarding the wish to break away from Kenya. According to the report by the then Secretary of State for colonies Duncan Sandys,87% voted to secede while the rest said 'no'. This was not implemented and NFD/NEP, occupied by ethnic Somalis, remained a Kenyan territory. See 'We wanted to have our way as minority, says pre-secessionist', *The Standard*, 6 November 2010. Available www.standardmedia.co.ke/mobile/article/2000021832/we-wanted-to-have-our-way-as-minority-says-pre-seccesionist[Accessed 30 November 2017)

¹⁰⁸'War with Somalia 'started way before independence' reveals Karangi', *Daily Nation*, Sunday 16th,2015 p.17

The *Sunday Nation* was reporting on a presentation by the retired Chief of Kenya Defense Forces, Major retired Julius Karangi.

Ethiopia have not exercised their right to self-determination as advocated for by the United Nations¹⁰⁹.

As expected, Kenya refused Somalia's claim over the Northern Frontier District (NFD¹¹⁰) and declared that it was ready to defend her territory militarily. When Kenya turned down Somali demands, Somalia encouraged and helped the Somalis in Kenya to fight for the right to secede between 1963 and 1967¹¹¹. That war came to an end when the leaders of Kenya and Somalia met in Arusha, Tanzania, in October 1967 under the chairmanship of Zambian president Kenneth Kaunda and signed a Memorandum of Understanding¹¹². That memorandum, *inter alia*, called for the normalization of relations between the two countries, the ending of hostile propaganda and emergency regulations, and the appointment of a Working Committee of Kenya, Somalia and Zambia to implement the agreement¹¹³ That did not, however, mean an end to the Somali problem in Kenya. For example, early in 1981, a Somali irredentist movement

¹⁰⁹S. Makinda, 'Conflict and the Superpowers in the Horn of Africa', *Third World Quarterly*, Vol. 4, No. 1, 1982,p.97

¹¹⁰ Northern Frontier District (NFD) was the name used to refer to the NorthEastern part of Kenya especially in the colonial period. It is occupied by ethnic Somalis. Under the constitution of Kenya 2010, it comprises Garissa, Wajir, Isiolo, Marsabit and Mandera counties. Prior to and during the early years of independence (for Somalia and Kenya), the NFD expressed interest to unite with the Somali nation to form a greater Somalia. This was denied by independent Kenya and marked a series of guerilla wars between Kenya's security forces and secessionist groupings supported by Mogadishu.

See S. Cheboi, 'welcome to Garissa, eastern and central Africa's safest town', Special report, *Daily Nation*, Tuesday June 15, 2010.p19.

¹¹¹ This war is also called the *Shifita* War. *Shifita* is a Somali word meaning 'insurgents'.

¹¹²'Arusha Agreement on Ending of Kenya-Somali Border Hostilities, Somali-Ethiopian Agreement', Keesing's Record of World Events (Formerly Keesing's Contemporary Archives) vol.13, November 1967.p. 22386.

¹¹³S. Makinda, 'Conflict and the Superpowers in the Horn of Africa', *Third World Quarterly*, Vol. 4, No. 1, 1982,p.97

The Working Committee of Kenya was to implement the Memorandum of understanding

calling itself the NFD Liberation Front¹¹⁴ toured several Arab states soliciting for arms and money and later announced that it was determined to “liberate” about 200,000 Somalis in Kenya.¹¹⁵

The current Somali refugee crisis in Kenya can be traced to the overthrow¹¹⁶ of Somalia’s president Siad Barre¹¹⁷ by forces led by Mohamed Farah Aidid¹¹⁸ in January 1991. Following the coup, Somalia was left without a central government and fighting among clan factions that followed soon after made Somalia a failed state as it slowly descended into a civil war. Attempts by the USA to intervene in the civil war failed in 1993 leading to the infamous Black Hawk Down¹¹⁹ in Mogadishu where dozens of USA special forces were killed after failing to capture Mohamed Farah Aidid¹²⁰.

¹¹⁴NFD Liberation Front, as the name suggests, was formed in 1980-1981 to purportedly ‘liberate about 200,000 Somalis in Kenya’. The group sought to advance secessionist ideology in NFD hoping to ‘re-unite’ it with the greater Somalia. This was reported in Kenyan papers in May 1981. See, for instance, *The Weekly Review* (Nairobi) 8 May, 1981. See also Rono Jona, ‘Kenya Foreign Policy’, *Africa Foreign Policies* Stephen Wright (ed.) (Colorado: Westview Press, 1999), 10

¹¹⁵ This was reported in Kenyan papers in May 1981. See, for instance, *The Weekly Review* (Nairobi) 8 May, 1981. See also Rono Jona, ‘Kenya Foreign Policy’ *Africa Foreign Policies* Stephen Wright (ed.) (Colorado: Westview Press, 1999), 10

¹¹⁶S. Beswick, ‘If You Leave Your Country You Have No Life!’ Rape, Suicide, and Violence: The Voices of Ethiopian, Somali, and Sudanese Female Refugees in Kenyan Refugee Camps’, *Northeast African Studies*, New Series, Vol. 8, No. 3, Special Issue: Women in the Horn of Africa: Oral Histories, Migrations, and Military and Civil Conflict, 2001, p.77. Since the January 1991 overthrow of the dictatorial regime of Mohammed Siad Barre by forces led by Farah Aidid, the country has been without any effective central government or formal economy.

¹¹⁷Siad Barre was overthrown in January 1991 and died while in exile in Lagos, Nigeria on January 2, 1995, reportedly of a heart attack.

¹¹⁸ Mohamed Farah Aidid was a Somali Military commander and political leader. He was the chairman of United Somali Congress (USC) and later led the Somali National Alliance (SNA). He declared himself president of Somalia in June 1995 although his declaration did not receive international recognition. Aidid died on 2 August 1996 after succumbing to injuries inflicted on the battlefield a week earlier.

¹¹⁹ Black Hawk Down refers to the Battle of Mogadishu between USA Special forces and militia allied to Mohamed Farah Aidid, on October 3 1993, after a failed attempt to capture him in Mogadishu. It is reported

During the colonial era, when Italy and Great Britain occupied the region and most clans shunned Western education, one Somali clan group, the Mejerdeen¹²¹, became the most highly educated. Thus, in modern times many Mejerdeen served as bureaucrats in the Siad Barre regime and, hence, became among the wealthiest of Somalis, but also highly unpopular¹²². The unpopularity of the Mejerdeen clan led by Siad Barre created a conducive environment for the coup that overthrew him in January 1991. Consequently, thousands of Somalis crossed to Kenya to seek asylum leading to the establishment of Dadaab refugee camp in 1991.

Two decades later, little has changed. A refugee complex designed for 90,000 inhabitants in 1992 is now bursting at the seams. By May 2013, the official number of registered

that 19 USA Special forces and about 1000 Somali militia and civilians were killed. Since then, the USA withdrew from direct combat in Somalia and has largely resorted to 'technical assistance' in support of the struggling Somalia government after decades of being a failed state. Mark Bowden later wrote a book titled *Black Hawk Down* based on investigative research on the battle.

¹²⁰ Mohamed Farah Aidid and his senior commanders were being sought after for attacking humanitarian and UN staff working in Somalia. He was also accused of attacking Unified Task Force (UNITAF), a USA-led United Nations sanctioned multinational force, which operated in Somalia between 5 December 1992-4 May 1993. UNITAF was to create a protected environment to facilitate humanitarian operations in Southern Somalia. See www.un.org/Depts/DPKO/Missions/unosomi.htm (accessed 1 December 2017).

¹²¹ One of the clans in Somalia that had embraced education and became wealthy but unpopular. Siad Barre belonged to this clan. See S. Beswick, 'If You Leave Your Country You Have No Life!' Rape, Suicide, and Violence: The Voices of Ethiopian, Somali, and Sudanese Female Refugees in Kenyan Refugee Camps', *Northeast African Studies*, New Series, Vol. 8, No. 3, Special Issue: Women in the Horn of Africa: Oral Histories, Migrations, and Military and Civil Conflict, 2001, p.77

¹²² S. Beswick, 'If You Leave Your Country You Have No Life!' Rape, Suicide, and Violence: The Voices of Ethiopian, Somali, and Sudanese Female Refugees in Kenyan Refugee Camps', *Northeast African Studies*, New Series, Vol. 8, No. 3, Special Issue: Women in the Horn of Africa: Oral Histories, Migrations, and Military and Civil Conflict, 2001, p.77

refugees in Dadaab was 425,238¹²³ with 51% of them being women, living on land with an official capacity of 190,000 people. The International Organization for Migration (IOM), Office for the Coordination of Humanitarian Affairs (OCHA) in its March 2013 report places the number of refugees in Kenya at 474,483¹²⁴. The 2011/2012 famine caused the latest exodus – a crisis which estimates suggest killed up to 260,000 Somalis, and forced 150,000 across the Kenyan border.¹²⁵

2.2 Security challenges in Dadaab refugee camp

While the Government of Kenya has often perceived the presence of Somali refugees in Kenya as posing a serious security threat to Kenya, the refugees too have suffered immense abuse as a result of their stay in the refugee camps in Kenya. The plight of Somali refugees in Kenya and the challenges of living in designated refugee camps with a limited freedom cannot be overemphasized. Jeff Crisp, Stephanie Beswick and Peter Kirui have extensively highlighted the problems of refugees while in Dadaab refugee camps especially regarding the physical security of refugees. Writing on 'The Political Economy of Violence in Kenya's refugee camps', Jeff Crisp captures this scenario when he asserts that all forms of insecurity including sexual abuse and violence, armed robbery, domestic

¹²³ UNHCR data as of May 2013. However it has been reported that at least 40,000 people or more are Kenyan Somalis who have opted to register as refugees in order to receive food rations. Interview with the Department of Refugee Affairs (DRA) representative in Dadaab. 13 September 2016.

¹²⁴Office for the Coordination of Humanitarian Affairs (OCHA), *Eastern Africa: Displaced Populations Report*, Issue no.14 (30 September 2012–31 March 2013) March 2013

¹²⁵ Asylum Under Threat – Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor, (2012) RCK with the support of DRC.

violence, among others, are rampant in Dadaab and Kakuma refugee camps¹²⁶. Stephanie Beswick, while describing religious intolerance in the refugee camps cites a scenario where a wife of a Somali family who had converted to Christianity was beaten and raped in the Ifo section of the camp¹²⁷. As Evelyne Kiswii observes, the concentration of refugees along the Kenyan border points have become extremely insecure which has been caused by the mass movement of armed immigrants assumed to sneak in small arms that have had devastating consequences on Kenya's security¹²⁸. She maintains that insecurity in Kenya has been on the rise since refugees started streaming in, in large numbers. This situation has caused a lot of concerns¹²⁹ in the government institutions mandated with handling security in Kenya.

These realities paint a grim picture of the safety of refugees while in the refugee camps, portraying their prolonged stay in the camps as one of last resort and as a result of a lack of alternative. While Kenya complains of the insecurity associated with the hosting of thousands of Somali refugees, the refugees too are complaining of the unbearable physical insecurity conditions in the camps that seem to pose even more danger. The

¹²⁶J. Crisp, 'A State Of Insecurity: The Political Economy Of Violence In Kenya's Refugee Camps' vol.99, no. 397, pp 601-632

¹²⁷S. Beswick, 'If You Leave Your Country You Have No Life! Rape, Suicide, and Violence: The Voices of Ethiopian, Somali, and Sudanese Female Refugees in Kenyan Refugee Camps', *Northeast African Studies*, New Series, Vol. 8, No. 3, Special Issue: Women in the Horn of Africa: Oral Histories, Migrations, and Military and Civil Conflict, 2001, p.94.

¹²⁸E. Kiswii, 'Refugee Influx and (In) security: Kenya's experience, 1991-2012', Master Thesis, University of Nairobi, 2013.p.5.

¹²⁹E. Kiswii, 'Refugee Influx and (In)security: Kenya's experience, 1991-2012', Master Thesis, University of Nairobi, 2013.p.5. The concern, among others, was the fear that terrorist can camouflage as refugees to enter the country and cover their activities including recruiting from the refugee population.

violence and instability which prevail in many refugee-populated areas is worrying as it tends to legitimize the argument that refugees are a source of insecurity, and that it is therefore justifiable to repatriate them from their countries of asylum.

It is therefore clear that the long-term stay of refugees in the restricted camps serves neither the interests of the host state nor the refugees. Hence the need to repatriate, re-settle and/or integrate refugees is paramount, as a permanent solution to the refugee problem. It is against this background that calls for the repatriation of refugees having become more vocal and intense by the day. While the Government of Kenya is keen to repatriate refugees, it admits that Somalia's political and economic recovery, as well as the effectiveness of humanitarian programmes, would not be viable without first tackling the issue of security.¹³⁰

2.3 Somali refugees and Kenya's national security

In the case of Kenya, the burden of hosting Somali refugees seem to have weighed heaviest since 2011, the year that marked two decades of hosting Somali refugees who fled the war-ravaged Somalia after the ousting of President Siad Barre in 1991. The year 2011 was not only the 20th anniversary of hosting Somali refugees in Kenya, but it also

¹³⁰Presidential Press Service 'Uhuru: security key to relocation of refugees' in *The Sunday Nation*, 7th May 2013. This was part of President Uhuru Kenyatta's comments during The Somali Conference in London on 7 May, 2013. Available at <https://www.nation.co.ke/news/Uhuru-Security-key-to-relocation-of-refugees/1056-1845230-jkqs41/index.html> [Accessed 7th May, 2018]

marked the beginning of a war between Kenya and Al Shabaab militants inside Somalia. Announcing the war on Al Shabaab, the Government of Kenya maintained that it was not at war with Somalia but were simply in hot pursuit of the militant group that had infiltrated across the Kenyan border.¹³¹ The Kenyan military engagement inside Somalia led to several reprisal attacks in Dadaab refugee camps, targeting Kenyan government security agents, namely the police and the military¹³². While it is difficult to identify the actual perpetrators of these attacks in the refugee camps, the government of Kenya maintained that Somali refugees were supporting armed militias within and outside Kenya and consequently started calls for refugees to repatriate to their home country.

Even though Kenya would want Somali refugees repatriated as soon as possible, it has an international obligation in terms of the Somali refugees. Kenya is signatory to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol as well as to the 1969 OAU Convention Governing Specific Aspects of the Refugee Problem in Africa.¹³³ This in essence means that Kenya is obliged to conform to the provisions of these refugee instruments, even as it seeks that the voluntary repatriation of Somali refugees be sooner rather than later.

¹³¹ Presidential Press Service 'Kenya not at war with Somalia' *Daily Nation* Newspaper, Friday October 28, 2011. p1. Available at <https://www.nation.co.ke/news/Kenya-not-at-war-with-Somalia/1056-1263672-o8m60dz/index.html> [Accessed 7th May, 2018] This were comments made by Kenya's then president Mwai Kibaki while attending a Commonwealth Heads of Government in Perth, Australia. Kenya declared war on militant group Al Shabaab on 16th October 2011.

¹³² 'Explosion kills Policeman in Dadaab Refugee camp' *The Standard* Newspaper, Monday, December 5th, 2011. The militant group Al Shabaab have since mid-October 2011 used guerilla tactics to kill tens of police and military officers in Kenya especially in Northeastern and Coastal parts of Kenya.

¹³³ Kenya ratified the 1951 Convention and its 1967 Protocol in 1981 and the 1968 OAU Convention in 1972.

Kenya's claim that Somali refugees contribute to insecurity in Kenya seems to resonate with Crisp's assertion that Somali men and adolescents are sometimes obliged to leave the camps in Dadaab to fight¹³⁴ on behalf of a particular clan or faction within their country of origin. This notwithstanding, various state and non-state actors have called on Kenya to avoid the general condemnation of Somali refugees as violent, but to seek to weed out criminal elements among the refugees in the Dadaab camps. Kenyan Somalis have also called on the Government of Kenya to stop the blanket condemnation of Somali refugees arguing that they have suffered from the stigma too. This is because according to Prestholdt, Muslims in Kenya (including Somali refugees) are unfairly targeted¹³⁵ by anti-terrorism initiatives largely supported by the United States of America (USA). The Muslim community complains of victimization by security apparatus. According to Prestholdt,

Most notably, the Kenyan government has pursued the domestic war on terrorism by means that are often heavy handed and ineffective. Instead of addressing the ease with which terrorists enter Kenya or the limitations of Kenya's intelligence apparatus, authorities have often articulated the problem of terrorism narrowly, as one nurtured by Kenya's Muslim minority.¹³⁶

¹³⁴J. Crisp, 'A State Of Insecurity: The Political Economy Of Violence In Kenya's Refugee Camps' vol.99, no. 397, p. 603

¹³⁵Muslims, especially of Arab descent, like the Somali, seem to have been victimized. This may have been informed by the wrong perception that Muslim Arabs were 'likely' to be terrorists. The largely publicized photo of late leader of Al-Qaeda, Osama Bin Laden, who was Arab, seem to have entrenched this negative perception. See also J. Prestholdt, 'Kenya, the United States, and Counterterrorism', *Africa Today*, Vol. 57, No. 4, 2011.p.5

¹³⁶J. Prestholdt, 'Kenya, the United States, and Counterterrorism', *Africa Today*, Vol. 57, No. 4, 2011.p.5

While a few armed refugees could be a threat to the stability of both the hosting and the home countries, the physical security of refugees themselves is also crucial. The fact that refugee protection and security lies in the hands of the host government brings the level of that protection into question, when the government that is expected to provide the protection is demanding that refugees should repatriate. The need to reconcile the interests of each side, in the best long term interests of the refugees and the host state is essential in order to avoid potential conflict.

The perception of refugees as a political problem is not a novel phenomenon. Gil Loescher stresses the need to not only see refugees as a humanitarian problem but also as a political security problem. He argues that:

Too often refugees are perceived as a matter for international charity organizations, and not as a political and security problem, yet refugee problems are in fact intensely political. The presence of refugees accelerates existing internal conflicts in the host countries. During the 1980s, for example, the proliferation of arms following the influx of three million Afghans contributed to a resurgence of Pathan conquest in Pakistan. Elsewhere, Palestinian refugees upset delicate domestic balances in Lebanon and Jordan¹³⁷.

The presence of refugees in many third world host states is further compounded by armed groups of exiles actively engaged in warfare with political objectives. Loescher contends that refugee warriors invite military retaliation, complicate relations with other

¹³⁷G. Loescher, *Refugee Movements and International Security*, Adelphi Paper 268, London, Brassey's for IISS, 1992, p14.

states and threaten the host states and the security of their citizens¹³⁸. As a result, host countries have often been unwillingly drawn into conflicts with their neighbours. According to him, the dilemma for the African states, therefore, is a dilemma between a humanitarian concern for refugees, and a realization that refugees can be a source of tension between the African states. The Organization of African Unity (OAU) Convention on refugees also recognized the political aspects of refugees (OAU, 1969). In addition, refugee flows present a challenge to one of the key principles of state sovereignty: the control of borders and of non-citizens in the country. According to Jacobsen, 'the most serious of these problems is cross-border raids and the import of conflict from the sending country'¹³⁹.

Burundian refugee camps in Tanzania are also stigmatized for being highly militarized and for harbouring rebel movements, including Centre for the Defence of Democracy (CNDD)¹⁴⁰, Party of the Liberation of the Hutu People (Palipehutu)¹⁴¹, and Front for National Liberation (Frolina)¹⁴². This accusation is partly a result of a well waged

¹³⁸ G. Loescher, *Refugee Movements and International Security*, Adelphi Paper 268, London, Brassey's for IISS, 1992, p14.

¹³⁹ K, Jacobsen, 'Can Refugees Benefit the State? Refugee Resources and African State building', *The Journal of Modern African Studies*, vol.40, no.4, 2002, p. 586.

¹⁴⁰ CNDD: Centre for the Defense of Democracy, with its splinter group CNDD-FDD (Forces for the Defense of Democracy), W. Nindorera, *The CNDD-FDD in Burundi: The path from armed to political struggle*, Berlin, Berghof Foundation, Transition Series No.10, 2012.

¹⁴¹Palipehutu: Party of the Liberation of the Hutu People. It launched cross-border incursions against Burundi beginning in the 1980s.It recruited from refugee camps and settlements, and carried out active training and small scale cross-border attacks from the bush not far from their Tanzanian encampments. See www.refworld.org/docid/3ae6ad4c74.html (accessed 1 December 2017)

¹⁴²Frolina: Front for National Liberation. It launched cross-border incursions against Burundi beginning in the 1980s.It recruited from refugee camps and settlements, and carried out active training and small scale

propaganda campaign by the Buyoya Government in Burundi¹⁴³. Tanzania's experience of the Rwandan refugee camps in Zaire between 1994 and 1996, which included perpetrators of the genocide¹⁴⁴ raised security concerns.

Oroub El-Abed, argue that refugees can be of benefit¹⁴⁵ to the host governments if they are allowed to work unhindered and become productive members of the society. She admits that most governments, however, have been reluctant to incorporate refugees in their national systems¹⁴⁶.

A good example in support of Oroub-El-Abed's argument is that of Palestinian refugees who have been integrated with Egyptian communities to such an extent that they are virtually undistinguishable from one another¹⁴⁷. On the contrary, proponents of repatriation maintain that 'to be rooted is perhaps the most important and least

cross-border attacks from the bush not far from their Tanzanian encampments. See also *The AU and the Research for Peace and Reconciliation in Burundi and Comoros*, Centre for Human Dialogue, 2011.

¹⁴³Major Pierre Buyoya led a military coup d'état in September 1987 against the second Republic of Burundi, led by Jean-Baptiste Bagaza and installed himself as the first president of the Third Republic. Although he had proclaimed an agenda of liberalization and mending relations between Hutu and Tutsi, he presided over an oppressive regime consisting primarily of Tutsi people. Hutu people led uprising in 1988 that claimed approximately 20,000 lives. After the assassination of president Melchior Ndadaye on October 1993 (only 4 months after winning election), Buyoya intensified military campaigns against interim president Ntibantunganya and toppled him in July 1996.

¹⁴⁴ When genocide occurred in Rwanda in 1994, nearly two million refugees fled into Eastern Zaire. Those refugees included the ex-Far and Interahamwe, and former Rwandan officials involved in the genocide. See also International Crisis Group Report, Nairobi, 25 November 1999, 'Burundi Refugees in Tanzania: The Key Factor to the Burundi Peace Process'.

¹⁴⁵Oroub El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170.

¹⁴⁶O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170.

¹⁴⁷ L. Brand, 'Nassir's Egypt and the Re-emergence of the Palestinian National Movement', *Journal of Palestinian Studies*, vol.17, no. 2, 1988, p.85.

recognized need of the human soul¹⁴⁸. While this quotation may apply to integration, it is assumed that a sense of belonging seems to be more real and natural in repatriation as compared, relatively, to integration. Ignatieff also argues that, 'belonging...is first and foremost protection from violence¹⁴⁹'. The Co-ordinator of the Mozambique Repatriation Operation observed, '...people have this strong, compelling urge to go home. The yearning to return is not reduced by the time they spend away¹⁵⁰'.

It is clear therefore that while Oroub El-Abed's idea of integrating refugees into the host state is worthwhile, it works on the assumption that all refugees embrace integration to the host state which may not be the case. This was revealed by Rwandan and Burundian refugees in Tanzania, where some rejected the offer¹⁵¹. Because of the concept of "home" and belonging, therefore, repatriation may be easily embraced by many refugees if prevailing circumstances in home countries allow for such repatriation.

2.4 The theory and practice of the principle of non-refoulement in Africa.

While the 1951 Convention Relating to the Status of Refugees does not address the question of voluntary repatriation as such, it contains several provisions with significant

¹⁴⁸Cited in L. Malkkil, *Purity and Exile: Violence, Memory and National Cosmology among the Hutu Refugees in Tanzania*. Chicago, University of Chicago Press, 1992, p.24.

¹⁴⁹ M. Ignatieff, *Blood and Belonging*, Canada, Penguin, 1994, p. 6.

¹⁵⁰C. Dolan, 'Repatriation from South Africa to Mozambique: Undermining Durable Solutions' In *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*. M. Walsh et. al (eds.) Oxford: Berghahn Books, 1999, p. 94.

¹⁵¹ World Refugee Survey, 2008, p2.

relevance to UNHCR's respective statutory functions. There are two key principles. The first of these is the principle of non-refoulement. Article 33 prohibits a state from expelling or returning ('refouler') a refugee in any manner whatsoever to the frontiers of territories where he or she would be exposed to persecution.¹⁵² The second principle is the well-founded fear of persecution. Such fear, as defined in Article 1, is central to the refugee definition of the Convention. The fact that repatriation must be voluntary implies that the subjective fear should have ceased. Refugee status can cease, however, once meaningful national protection is re-established.¹⁵³

The principle of non-refoulement was meant to ensure that the refugee who is fleeing for fear of persecution is not exposed to such danger by being refused entry to a country of asylum or being forcefully repatriated. Unless the conditions that necessitated the forced migration change, the refugee should remain a person of concern to UNHCR, the refugee protection agency.

Although *non-refoulement* is a key principle of the 1951 UN Convention, many historical examples in Africa seem to suggest otherwise.

Contrary to a common conception, *r e f o u l e m e n t* in Africa is very

¹⁵² See Article 33 of the 1951 Convention Relating to the Status of Refugees

¹⁵³ Article I paragraph 4 of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The 1969 OAU Convention Governing the specific Aspects of Refugee Problems in Africa attempted to domesticate the global 1951 UN Convention to align it to the African realities. Also see The 1951 Convention Relating to the Status of Refugees.

common: hundreds of refugees fleeing conflict in Sierra Leone were sent back by Guinea in 1999; Namibian authorities implemented a dusk-to-dawn curfew, with soldiers under orders to shoot violators all along a 450 km bank of the Kavango River in 2001. This last example prevented Angolan refugees escaping violence in Cuban Province from seeking asylum because government and UNITA patrols could be avoided safely only at night¹⁵⁴.

Elsewhere in the mid-1990's, both Tanzania and Zaire at times closed their borders to masses attempting to flee the conflict in Rwanda.¹⁵⁵ To thwart the entry of refugees, states may sometimes erect direct barriers that serve as border closures. This was the case in South Africa during the apartheid era when the government of Pretoria erected a 3,000 volt electrified razor wire fence to prevent the entry of Mozambican refugees.¹⁵⁶ Refugees who succeed in crossing a state border to asylum may still face ejection by officials, which can be a matter of formal policy and may be truly massive in scope. In July 1999, without court review, Zambia ordered the deportation of all nationals, including refugees, of the

¹⁵⁴ These examples are cited in J. C. Hathaway, *The Rights of Refugees under International Law*, Cambridge 2005, 280.

¹⁵⁵ See: Border closure triggers debate, *Guardian*, July 19, 1995. Besides, as some 50,000 refugees attempted to flee ethnic clashes either in Rwanda or in Burundi, the Government of Arusha officially closed its border with Burundi on March 31, 1995. At that time the Tanzanian Prime Minister told Parliament that: '[t]he gravity of the situation, especially for those coming from Burundi and Rwanda, has made it inevitable for Tanzania to take appropriate security measures by closing her border with Burundi and Rwanda.' Cited in Hathaway, op. cit. note 29, 281. About Zaire, on August 19, 1994, Deputy Prime Minister Malumba Mbanga declared that no more refugees would be allowed to cross from Rwanda into Zaire. Before this announcement, some 120 refugees per minute had been crossing into Zaire at the frontier post in Bukavu. See: *Le départ des soldats français du Rwanda. Le Zaire ferme ses frontières aux réfugiés*, *Le Monde*, August 22, 1994: 'La frontière est fermée dans le sens Rwanda-Zaire, et reste ouverte dans l'autre sens afin de permettre aux réfugiés de regagner leur pays.'

¹⁵⁶ C. Nettleton, *Across the Fence of Fire*, 78 *Refugees* (1990), 27-28.

Democratic Republic of the Congo because Zambia's national budget could not cover their assistance.¹⁵⁷

Intolerance of refugees among the host communities in the state of asylum may lead to non-state agents being used by state agents to either force the refugees to repatriate or to be denied entry at the frontier. Sometimes, non-state agents carry out ejection with the complicity or tolerance of national authorities, as in Kenya in the mid 1990s.¹⁵⁸ Sierra Leonean and Liberian refugees fled Guinea-Conakry in 2000 during a wave of xenophobic violence that was unleashed after the president of Guinea-Conakry encouraged citizens to form militia groups for the purpose of forcing refugees to be repatriated.¹⁵⁹

As Kenya and other countries hosting refugees continue to call for the repatriation of refugees, the principle on non-refoulement seems to be under threat. This is because, legally, asylum states can revoke international protection by activating a cessation clause. Article 1C (5) and (6) of the 1951 Refugee Convention allows states to cease to offer refugee status when a change in circumstances takes place in the country of origin that

¹⁵⁷ Cited in H a t h a w a y , op. cit. note 29, 284. However, to highlight the importance of refugees for the Zambian economy, see news: Zambia: repatriation leads to decline in food production: 'The repatriation of Angolan refugees is creating food shortages in and around the Zambian camps they have lived in for decades', 201 Jesuit Refugee Service Dispatches (28 September 2006).³³

¹⁵⁸ F. D e l M u n d o , The Future of Asylum in Africa, 96 Refugees (1994), 7: 'There is resentment, for example, in Kenya, at the security problems the presence of Somali refugees has brought. Last year, Kenyan security forces pushed back over 1,000 refugees from a border camp, something unheard before in Africa.'

¹⁵⁹ D. F a r a h , For Refugees, Hazardous Haven in Guinea, Washington Post 24 (6 November 2000).

ends the fear of persecution causing flight.¹⁶⁰ State cessation of refugee status is termed 'mandated repatriation' although it is not well developed in international practice.¹⁶¹ The UNHCR has set forth recommended criteria states can use for evaluating whether a fundamental change has occurred.¹⁶² However, the UNHCR's interpretation of the 1951 Refugee Convention obligations, while authoritative, is not binding on states.¹⁶³ As demonstrated above, the legal requirements states must satisfy to mandate repatriation under the 1951 Refugee Convention are not clear, and confusion exists at the intersection of voluntary and mandated repatriation. Since it is upon host states to determine whether to activate cessation clause or otherwise, the process is subject to abuse by host state depending on their interests.

As demonstrated in the literature above, the principle of non-refoulement, is maintained primarily in theory rather than in practice. While non-refoulement is a well-articulated principle in the 1951 UN Convention and other national and regional instruments regarding refugees, its implementation seems to largely depend on the goodwill of

¹⁶⁰ 1951 Refugee Convention, *supra* note 5, art. 1C (5)–(6).

¹⁶¹ See Susan Kneebone and Maria O'Sullivan, Article 1 C 1951 Convention, in *The 1951 Convention Relating To The Status Of Refugees And Its 1967 Protocol: A Commentary* 513 (Andreas Zimmermann ed., 2011) (noting that 'there is relatively little older jurisprudence on Art. 1 C, para. 5,' and much of the jurisprudence in existence concerns non-recognized refugees).

¹⁶² See UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1c(5) And (6) Of The 1951 Convention Relating To The Status Of Refugees*, 10–12, U.N. Doc. Hcr/Gip/03/03 (Feb. 10, 2003) [Hereinafter *Guidelines On International Protection*].

¹⁶³ See J. Hathaway, *The Right of States to Repatriate Former Refugees*, 20 OHIO ST. J. ON DISP. RESOL. 175, 204–06 (2005). While all states have the sovereign authority to allow any person they wish to remain on their territory and while it will often be humane and right to extend such generosity, this is not a matter fairly understood to be required by either the text or purposes of the refugee law.

individual states that host refugees and the prevailing circumstances and contexts in these states.

2.5 Tripartite agreements on mass repatriation: problems and prospects

According to the UNHCR, persons compelled to flee their country of origin principally to escape threats to their life, liberty, freedom or physical integrity must be able to call upon, and to receive, the protection and assistance of the international community. The purpose of international protection is not, however, that a refugee remains a refugee forever, but to ensure the individual receives renewed membership of a community and the restoration of national protection, either in the homeland or through integration elsewhere. Voluntary repatriation is usually viewed as the most desirable long-term solution by the refugees themselves as well as by the international community. UNHCR's humanitarian action in pursuit of lasting solutions to refugee problems is therefore oriented, first and foremost, in favour of enabling a refugee to exercise the right to return home in safety and with dignity¹⁶⁴.

While the refugee protection agency highlights the role of the international community and the refugee agency in repatriation, the principle seems to be more theoretical than practical. The picture on the ground may be different with refugees sometimes being

¹⁶⁴ United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, 1996.

reluctant to repatriate, claiming that the conditions back home may not be conducive for return.

For example, despite UNHCR's efforts to promote the repatriation of Afghan refugees in Pakistan¹⁶⁵, many refused to repatriate citing, *inter alia*, the inability of Taliban government of Afghanistan to offer them the required protection for them to be safe. As a result, by 2006, the number of Afghan refugees in Pakistan was about 2.5 million who were not ready to leave because of insecure life conditions, less working chances and many social problems in Afghanistan. Thus, a large population was not willing to leave Pakistan because the conditions¹⁶⁶ in Afghanistan were not fully secure for peaceful life. This, therefore, implies that while the UNHCR felt that Afghanistan was safe for return, the refugees themselves, on the contrary, felt unsafe and insecure hence could not embrace the repatriation process as anticipated by the UNHCR.

These contrary opinions held by the UNHCR and Afghan refugees raise the question as to whether the refugees were involved fully in the whole process of repatriation. As it appears, it is possible that refugees may refuse to repatriate not necessarily because it is

¹⁶⁵ A. Alam, 'Barriers to Repatriation of Afghan Refugees', *International Journal of Academic Research in Business and Social Science*, vol.2.no.3.p. 60. The first wave of Afghan refugees to Pakistan began during the Soviet War in the 1970's. Although many have returned to Afghanistan since 2002, UNHCR in 2017 reported that there are up to 1.3 million Afghans in Pakistan.

¹⁶⁶A. Bialczyk, 'Voluntary Repatriation' and the Case of Afghanistan: A Critical Examination', Oxford, Refugees Studies Centre, Oxford University, Working Paper Series, 2008. The conditions in Afghanistan were harsh with rampant insecurity, poverty, unemployment etc. The Taliban government is also accused of being too weak to govern decisively.

unsafe to return, but because they felt they were excluded from the decision to return and hence have no control over, or do not own the process. The decision by many Afghan refugees not to return suggests that their aspirations may not have been captured during the decision making process. This implies that sustainable repatriation is only possible with the involvement of refugees. This involvement should go beyond that of 'spectators' to being actually involved in the 'game'.

After several Tripartite Agreements between the Afghanistan government(s), Islamic Republic of Pakistan and UNHCR regarding the voluntary repatriation of Afghan refugees in Pakistan, at the latest Tripartite Commission meeting signed on 11 March, 2015 in Islamabad, Pakistan provided for a more active role for the refugees in the repatriation process. For instance, all the three parties of the Tripartite Agreement, inter alia:

Underlined the importance of ensuring the inclusion of returnees into the new reform agenda of Afghanistan, its social policy and development processes at local, provincial and national sector levels: inter alia by facilitating their access to National Priority Programs, the National Solidarity Program, growth and job creation plans as well as by prioritizing community-based (bottom-up) investments benefiting both returnees and local communities in areas of return.¹⁶⁷

¹⁶⁷ Conclusions of the 25th Tripartite Commission Meeting held in Islamabad, Pakistan on 11th March 2015.p.1

The protracted refugee crisis in Pakistan, where Afghan refugees have sought refuge in Pakistan for at least 30 years, has seen the tripartite parties go beyond just calling for voluntary repatriation, but ensuring that returnees are included in the reform agenda of Afghanistan in all levels and sectors.

In the case of Burundi, many of the refugees from the previous 1972 caseload, especially those who had lost relatives, bitterly complained that they were duped by the international community into believing that it had been safe for them to return to Burundi.¹⁶⁸ Unlike the Afghan refugees, the Burundian refugees seem to have been unaware of the state of unsafety and insecurity in Burundi before choosing to repatriate. This may have been occasioned by lack of information regarding their country of origin which led to the regrettable decision to repatriate. Such instances may lead to 'recycled' refugees where refugees decide to go back to the refugee camps because of difficult circumstances at home. In another instance, following the first tripartite agreement of July 24, 2003¹⁶⁹, repatriation of some Rwandan refugees from Uganda took place. However, by August 2004, nearly 700 out of 2,000 repatriated refugees returned to Uganda citing persecution¹⁷⁰ in Rwanda. These recycled refugees argued that they had been repatriated

¹⁶⁸ International Crisis Group Report of 25 November 1999, 'Burundi Refugees in Tanzania: The Key Factor to the Burundi Peace Process' p.3

¹⁶⁹ Tripartite Agreement signed between UNHCR, Government of Uganda and Rwanda on voluntary repatriation of up to 26000 Rwandan refugees in Uganda.

¹⁷⁰D. Williams, and Jesuit Refugee Service, 'Is Rwanda Safe? An inquiry into the reluctance of Rwandan refugee community to repatriate', 16 August 2004, p.6

against their will due to push factors and threats¹⁷¹ from the Government of Uganda. These examples are indications of a glaring difference of opinion between the refugees and the tripartite signatories regarding the perception of safety and physical security at home.

It is worth noting that no repatriation is facilitated by UNHCR without Tripartite Agreements of the concerned countries i.e. either the home country of the refugee, the first country of asylum or any other country of asylum. Repatriation is the most common form of permanent solution to refugee problems besides local integration and resettlement. Local integration largely depends on the compatibility of refugees with the host population and the willingness of the host state to integrate them. Many host states in Africa and beyond have not embraced local integration as it is perceived as too delicate and a factor that could complicate domestic political, economic and social systems. Resettlement on the other hand may be a better option to many refugees but only few refugees (less than 1%) of all refugees globally may benefit from being resettled in a third country. For instance, between 1999-2009 some 810,000 refugees were resettled, compared to 9.6 million refugees who were able to repatriate.¹⁷² Considering that 59.5 million people were forced to flee their homes by end of 2014, up from 51.2 million a

¹⁷¹ C. Karooma, 'Reluctant to Return? The Primacy of Social Networks in the repatriation of Rwandan refugees in Uganda, Oxford, Refugees Studies Centre, Working Paper series no. 103, 2014.

¹⁷² UNHCR, Global Trends, 2009.

year earlier¹⁷³, repatriation remains the only most viable solution when dealing with such large populations.

While repatriation to home countries is often regarded as the best and most practiced form of permanent solution to refugee settlement, the timing of this is mostly contested. The question of whether home is now safe and conducive for return is always debatable. This is made even more complex since many refugee states in Africa will always consider repatriation as a permanent settlement even when conditions that led to the flight have not yet changed. As far as Rutinwa is concerned:

African States have become less committed to asylum. Instead of opening their doors to persons fearing harm in their own States, African countries now prefer refugees to receive protection in 'safe zones' or similar areas within their countries of origin. African States now routinely reject refugees at the frontier or return them to their countries of origin even if the conditions from which they have fled still persist. Refugees who manage to enter and remain in host countries receive 'pseudo-asylum'. Their physical security, dignity and material safety are not guaranteed. As for solutions, African States are less inclined to grant local settlement or resettlement opportunities to refugees. What they seem to prefer is repatriation at the earliest opportunity, regardless of the situation in the countries of origin.¹⁷⁴

The questions, in terms of this dissertation, include: Is the timing right for the repatriation of Somali refugees to their home country Somalia? What are the indicators that this is indeed the right time? Are refugees willing and ready to repatriate back home? How will

¹⁷³ UNHCR Global Trends: Forced Displacement in 2014.

¹⁷⁴ B. Rutinwa, *The End of Asylum? The Changing Nature of Refugee Policies in Africa*, New Issues in Refugee Research, Research Paper No. 5, Geneva, UNHCR, May 1999, 2, available at: <http://www.unhcr.org/3ae6a0c34.html> (last visited 11 Aug. 2010).

Somalia, Kenya and the UNHCR ensure a successful repatriation? How were refugee perceptions (if at all they were gathered) incorporated into the Tripartite agreement? How can refugee centered approaches on repatriation be applied more broadly in Africa? Kenya has expressed fear regarding the long-term hosting of Somali refugees, with increasing calls for the exploration of available options towards permanent settlement of Somali refugees.

Despite the rhetoric assuring refugees that Mogadishu is secure and the Government of Kenya being keen to rid Garissa of its inconvenient guests, Dadaab's refugees are still reluctant to leave. The reasons for this vary, but most still feel it is too unsafe to return¹⁷⁵. Others feel there are more opportunities in Kenya, or simply hold no ties to their "homeland", having been born or raised in the camp¹⁷⁶. It is interesting though, that both the refugees and the host state cite their security fears; for Kenya, the presence of refugees poses a security threat (especially because of the porous Kenya-Somalia border) while for many refugees one of the greatest impediments to repatriation is the fear and insecurity

¹⁷⁵ Abdallah, Interviewed by Peter Kirui, 27th September 2016, Dagahaley camp (Dadaab), A1. He rejected the thought that Somalia was safe for return, arguing that 'More violence is experienced in Somalia, no clear information about the situation'. Abdallah shares this views with thousands of refugees in Dadaab refugee camp

¹⁷⁶ Hussein, Interviewed by Peter Kirui, 27th September 2016, Dagahaley camp, C1. He asserted that he was not going to Somalia because, 'I am among those who came in 1991 at a tender age. I do not have home to go back to'.

C. Kamau, & J. Fox, 'The Dadaab Dilemma: a Study on Livelihood Activities and Opportunities for Dadaab Refugees' Itermedia Development Consultants Report of August 2013 commissioned by Danish Refugee Council (DRC)

inside Somalia¹⁷⁷. Apart from security, many host states complain that refugees compete with locals for scarce resources such as land, jobs and environmental resources (e.g. water, rangeland or firewood), and overwhelm existing infrastructure such as schools, housing and health facilities. These concerns underpin the state's rationale for keeping refugees in camps, where they can be assisted and managed by international refugee agencies¹⁷⁸.

The quest for permanent settlement of refugees is indeed more pressing in Kenya than in any other country in Africa. According to the United Nations High Commission for Refugees (UNHCR), as of mid 2013, UNHCR recorded Kenya as hosting the majority of refugees in the East and Horn of Africa region with 550,506 refugees. In the Southern African region, South Africa hosted the majority of refugees at 65,233. In Central Africa and the Great Lakes region, the Democratic Republic of Congo hosted the highest number at 183,244 while in the West African region; Liberia hosted the majority of refugees standing at 58,852¹⁷⁹.

The fact that Kenya hosts the highest number of refugees in Africa does not only justify the need for the proposed study but the urgency too of finding a lasting settlement

¹⁷⁷Omar, Interviewed by Peter Kirui, 27th September 2016, Dagahaley camp, J1. Omar maintained that, 'Somalia is full of gang militia, no place for non combatants like me'.

¹⁷⁸K. Jacobsen, 'Can Refugees Benefit the State? Refugee Resources and African State-building', *The Journal of Modern African Studies*, Vol. 40, No. 4, 2002, p.580.

¹⁷⁹United Nations High Commissioner for Refugees. *Global trends report 2012*. Geneva, Switzerland: Division of Programme Support and Management, 2013.

solution for refugees in cases of protracted conflicts. Given that repatriation remains the optimum solution to refugee problems, especially when dealing with large numbers of refugees, there is evidently a need to better understand past repatriation experiences and the problems that have been generated by repatriation processes¹⁸⁰. Although repatriation has been termed as the optimum solution when dealing with large numbers, other researchers note that 'what is being promoted as the most desirable solution to refugee crises is poorly understood social and spatial phenomena'.¹⁸¹

2.6 Existing Gaps in the literature on effective repatriation.

Perhaps Harrell-Bond is one of the first writers on repatriation to call for more research¹⁸² regarding the most conducive circumstances for a successful repatriation. He notes that research is especially urgent to test the assumption which has been the basis for the policy of promoting repatriation¹⁸³. According to him, in the formulation of this policy

¹⁸⁰J. Rogge and J. Akol, 'Repatriation: Its Role in Resolving Africa's Refugee Dilemma' *International Migration Review*, Vol. 23, No. 2, 1989 p. 190.

¹⁸¹J. Bascom, 'The Dynamics of Refugee Repatriation: The Case of Eritreans in Eastern Sudan', in W.T.S. Gould and A.M. Findlay (eds.) *Population, Migration and the Changing World Order* (New York: John Wiley and Sons, 1994), p.226 See also Norwegian Government, Department of Immigrant and Refugee Affairs, *Refugees and Repatriation: Our Current Knowledge on the Subject* (Oslo, May 1994).

The study states at p.5: 'Even if repatriation has come more and more in focus, there is lack of conceptual and empirical knowledge about the issue, especially in regard to why the refugees return and which factors influence their decision'

¹⁸²B. Harrell-Bond, 'Repatriation: Under What Conditions Is It The Most Desirable Solution For Refugees? An Agenda For Research', *African Studies Review*, Vol. 32, No. 1, 1989, p.42

¹⁸³B. Harrell-Bond, 'Repatriation: Under what Conditions is it the most Desirable Solution for Refugees? An Agenda for Research', *African Studies Review*, Vol. 32, No. 1, 1989, p.42

there is little evidence to suggest that refugees have first been consulted, either on an international or on a local level. Arrangements to ensure that, before making a decision to repatriate, refugees have access to sources of information concerning conditions in their home country (which they can consider credible), have been unsatisfactory. In some cases, this right has even been denied¹⁸⁴.

A more serious obstacle to the development of the study of forced migration is a disturbing tendency for many of those who have begun to publish on refugee issues to place an uncritical reliance on the statements, position papers and other literature produced by humanitarian agencies, despite the glaring absence of findings from independent field research which are needed to substantiate¹⁸⁵ them. As a result, these have been incorporated into academic writing and publications, and researchers have given them credibility rather than questioning or examining the assumptions and articles of faith that dominate the refugee regime. The dissertation will contribute in highlighting repatriation processes and actors in Dadaab refugee camp. The voices of individual refugees are comprehensively discussed to allow a bottom-up approach to the refugee situation in Dadaab.

¹⁸⁴B. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*. Oxford: Oxford University Press, 1986, p. 199.

¹⁸⁵B. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*. Oxford: Oxford University Press, 1986, p.43

Perhaps the ideas of Harrel-Bond regarding the need to get views from individual refugees, UNHCR agency staff on the ground, local host community members and government officials manning the refugee camps could have been based on an assumption that there could be glaring differences of opinion between the situation in the refugee camps and the reports gathered by mainstream agencies purporting to represent refugees in those camps. More reliable information could be obtained through independent field research where information is obtained from refugee stakeholders on the ground. The repatriation debate, among other refugee issues, therefore, should not be left to states and other international bodies alone, but refugees and host communities, too, must be brought on board. This will ensure that the voices of the masses (refugees) are heard from among the elites (governments and international agencies) who, in most cases, make decisions on behalf of refugees. Refugees, in most cases, feel isolated in the Tripartite Agreements. Such feelings of isolation of refugees in the Tripartite Agreement were captured by one camp staff member at Kibondo in Tanzania:

Refugees are still fearful of refoulement. The initiation of the organised repatriation program occurred simultaneously when rations to the camps were cut due to transport problems. This caused many refugees to think that the repatriation was forced. The

refugees have told the camp staff that they do not understand why they were not included as participants in the Tripartite Agreement.¹⁸⁶

The challenges of implementing the tripartite repatriation agreements call for a more refugee-centered initiative on repatriation characterized by sincere participation, consultation and inclusion. The study endeavours to not only fill this gap and contribute to this missing body of knowledge but to also suggest a more refugee centered approach to repatriation even when tripartite agreements do not exist.

Thus, a notable vacuum in the literature is the missing voice of refugees regarding their role in the tripartite agreements. Most tripartite agreements seem to be more reactive than proactive in having a more sustainable repatriation programme. Many protracted conflicts, for instance, lack a sustained programme of meaningful repatriation where the returnee is facilitated to integrate and participate in the daily process of rebuilding the nation.

Because of the missing link in the active repatriation process centered on the refugees themselves, most of the so called voluntary repatriation could be premature repatriation

¹⁸⁶ International Crisis Group Report of 25 November 1999, 'Burundi Refugees in Tanzania: The Key Factor to the Burundi Peace Process', p.10

with devastating results. Barry Stein¹⁸⁷ argues that premature repatriation comes when both the country of origin and the refugees are not ready for it, and the conditions at home have not changed sufficiently to pull the refugees home. In this case, neither the refugees nor their homeland are reconciled or ready for the return. Consequently, premature returnees are pushed¹⁸⁸ out by threats, attack, and expulsion rather than pulled home by peace and safety.

Besides the lack of refugee voices in the repatriation processes, literature challenging the refugee regimes are scarce. As this study suggests, it is time that focus shifted to reviewing the whole refugee regime that was drafted to address the post-World War II refugee crisis, then perceived as a temporary problem. The 21st Century realities have changed as refugee situations continue to be more protracted and complex, and involving larger number of refugees. The fact that most literature seems to focus on the plight of refugees and not the reasons for their plight is also explored in the study.

While many tripartite agreements provide for the physical security of refugees upon return, and their access to previous property that they owned,¹⁸⁹ the ability of the state to actually enforce these provisions is often more of an assumption rather than a reality.

¹⁸⁷ B. Stein, 'Refugee Repatriation, Return and Refoulement during conflict', *Promoting Democracy, Human Rights and Reintegration in Post-conflict Societies*, USAID 1997, p.4.

¹⁸⁸ B. Stein, 'Refugee Repatriation, Return and Refoulement during conflict', *Promoting Democracy, Human Rights and Reintegration in Post-conflict Societies*, USAID 1997, p.4.

¹⁸⁹ See clause 6 of the Tripartite Agreement on the voluntary repatriation of refugees from the Democratic Republic of Congo living in the United Republic of Tanzania signed on 20th January, 2005.

Most post-conflict governments are normally too weak to enforce such rights and in most cases the returnees soon realize that their lives and property could be in danger, a situation similar to, or worse than what necessitated the flight in the first place.

2.7 Conclusion

In this chapter, I have explored The 1951 United Nations Convention Relating to the Status of refugees as the blueprint of the global refugee regime. I have examined the limited scope of the 1951UN Convention and the subsequent 1967 protocol that expanded its mandate. The Organization of African Unity Convention, Governing Specific Aspects of Refugee Problems in Africa of 1969 is also explored as an African domestication of the 1951 UN Convention. I argue that the refugee regime is outdated and limited in scope as it overlooks other causes of refugees fleeing life-threatening circumstances, for instance social and economic exclusion.

I also traced the antagonistic relationship between Kenya and Somalia that dates back to the early 1960's. Somalia's desire to have NFD/NEP unified with Somalia, and the subsequent resistance to this from Kenya is also examined. The current refugee crises in Dadaab brings to the fore the tense relationship between Kenya and Somalia that is particularly protracted given the porous vast border between the two countries. Kenya has often blamed Somali refugees in Kenya as supporting military groups from Somalia

in launching attacks in Kenya. These, however, remain allegations without substantial evidence being provided.

The challenge of implementing the 1951 UN Convention principle of *non-refoulement* is also extensively discussed in this chapter. I conclude that the principle of *non-refoulement* remains theoretical, as in practice the UNHCR does not have the power to dictate to host states on matters of refugees on their soil. In terms of the challenges of mass repatriation through tripartite agreements, I maintain that many tripartite agreements are not as a result of intensive and extensive consultation with refugees, but are mostly determined by few policy makers. This top-down approach by refugee actors (host state, home country and UNHCR) is criticized.

Finally, in this chapter, I discussed the existing gaps in the literature. Most reports on refugees are by humanitarian workers and organizations and not by independent academic researchers. Researchers may then utilize these sources to make claims. However, many reports do not capture individual refugee voices on repatriation but tend to rely on experts who are in charge of decision making, and remain top-down approaches.

In the next chapter - chapter three - I look at the interests and perceptions of the governments of Kenya, Somalia and the UNHCR regarding safety and security inside

Somalia. Perceptions of individual refugees are also examined. These perceptions are paramount as it forms the basis of the repatriation debate after the signing of the Tripartite Agreement. Although perceptions do not suggest generalization, their uniqueness helps us to see trends that may be useful in understanding the complex refugee phenomenon.

CHAPTER THREE

INTERESTS AND PERCEPTIONS OF THE GOVERNMENTS OF KENYA AND SOMALIA, UNHCR AND REFUGEES ON THE SAFETY OF SOMALIA

3.0 Introduction

The aim of this chapter is to explore the interests and subsequent perceptions of the governments of Kenya and Somalia, the UNHCR and refugees on the safety of Somalia as a pre-requisite for repatriation. Because interests are varied and complex among actors, the divergence of these interests among refugees, UNHCR, GoK and Somalia helps us understand the complex nature of repatriation politics. The interests of actors discussed as established in the study are therefore not deterministic but fluid and dynamic. None of these can be said to be dominant over the others at any given time.

While these perceptions may not portray the 'actual' state of safety and security in Somalia, it is, nevertheless, informs decision-making of refugees as to whether to return or not. It is also worth noting that the perceptions of various parties are largely informed by their embedded interests so much so that the perceived 'actual' safety or unsafety of Somalia, means very little as interests override perceptions. Perceptions also differ from one actor to another.

Kenya, as host state, is interested in securing its borders even if that means pressurizing refugees to repatriate and regardless of security situation at home. Somalia on its part is concerned with the return of its citizens from exile when they are already grappling with lots of domestic problems, especially insecurity. The UNHCR as a refugee protection agency is interested in refugee welfare and dignity while in exile and may be less

concerned with the specifics of the security situation in the home country. Refugees on their part are concerned with their safety and dignity whether at home or in exile. These myriad embedded interests of various parties make repatriation a complex process.

Interests are therefore important to understanding the perceived safety, or otherwise, as a precondition for repatriation. The interests of the Government of Kenya, Somalia, the UNHCR and refugees are largely going to inform their perceptions as a rationale to either justify repatriation or to criticize it. In any case, Somalia is a failed state and the larger portion is inaccessible. There is almost no government control to give room to any objective empirical finding on its state of safety and security or otherwise. Information of what really happens in Somalia is therefore scarce to the Government of Kenya, Somali Federal Government(SFG)the UNHCR and refugees and all have had to make their own judgments based on a number of activities that may capture the media headlines and from state and non-state actors who also have little and mostly unverifiable information. Consequently, parties interested in refugee repatriation have had to rely largely on their interests in their push for or against repatriation regardless of whether they think Somalia is safe(or not) to warrant such an action.

Regarding positions of the Government of Kenya and SFG on refugees, it is worth noting that they are mainly influenced by what is popular with their citizens. For instance, because of the perception that Somali refugees are a burden and a threat to security, it is popular among Kenyans. Consequently, the Government of Kenya is likely to push for repatriation especially in an electioneering period to gain political mileage. This has made

the issue of Somali refugees as a security threat in Kenya become a key election issue.¹⁹⁰ On the other hand, while Somali citizens are interested in a stable and secure Somalia, some Somalia government officials, perhaps benefitting from the failed state, have been accused of blocking 'efforts to revive an effective central government.'¹⁹¹

Before delving into the whole debate of the perception of safety and security in Somalia as a pre-requisite for repatriation, it may be necessary to, first, understand why most host states in the recent years prefer repatriation as solution to refugee problem as opposed to integration and resettlement. According to Chimni¹⁹², resettlement was the predominant solution after World War II and until 1985, when there was a shift towards repatriation as the preferred solution. This shift occurred after the Cold War, as Western countries began to promote repatriation when the number of asylum seekers arriving from the Global South increased and there was no longer a labour shortage or the same political motives to resettle refugees¹⁹³. In Africa, this also shifted in the late 1980s and the 1990s when many African host states no longer supported local integration and began to more

¹⁹⁰Amnesty International, *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 20th April 2017]

See also Heritage Institute for Policy Studies. *Hasty repatriation: Kenya's attempt to send Somali refugees home*, Mogadishu, 2013, p.3. Retrieved from http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf [Accessed 20th April 2016]

¹⁹¹K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, vol.31, no.3, 2007, p.75.

¹⁹²B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73

¹⁹³B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73

strongly favour repatriation.¹⁹⁴ Calls for repatriation intensified when the number of refugees seeking asylum significantly increased.¹⁹⁵ The previous 'open door policy' many African states had towards refugees ceased to exist.¹⁹⁶ Bradley describes the focus on repatriation as 'a definitive change in the structure of the international refugee system'¹⁹⁷, motivated by the interests of host and donor states, as well as states of origin.¹⁹⁸

While there is no doubt that repatriation, as stated above, has become the most preferred solution by stakeholders, and especially the host state, some scholars have been critical of this shift towards repatriation and the subsequent impact of this on refugee protection.¹⁹⁹ Takahashi²⁰⁰ even cautions that repatriation has in fact taken priority over refugee protection.

¹⁹⁴B. Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, vol.21, no.1, 2002, pp.12-41.

¹⁹⁵B. Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, vol.21, no.1, 2002, pp.12-41.

¹⁹⁶B. Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, vol.21, no.1, 2002, p.12.

¹⁹⁷M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, UK: Cambridge University Press, 2013, p.8.

¹⁹⁸B. Harrell-Bond, 'Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research', *African Studies Review*, vol.32, no.1, 1989, p.62.

¹⁹⁹K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, 2013,PDES/2013/14. Geneva, Switzerland: UNHCR Policy Development and Evaluation Service.

B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73.

B. Chimni, 'The meaning of words and the role of UNHCR in voluntary repatriation', *International Journal of Refugee Law*, vol.5, no.3, 1993, pp. 442-460.

S. Takahashi, 'The UNHCR handbook on voluntary repatriation: The emphasis of return over protection', *International Journal of Refugee Law*, vol.9, no.4, 1997, pp.593-612.

²⁰⁰S. Takahashi, 'The UNHCR handbook on voluntary repatriation: The emphasis of return over protection', *International Journal of Refugee Law*, vol.9, no.4, 1997, pp.593-612.

Today, states in the Global South, Kenya included, which are the primary hosts for refugees globally, largely continue to restrict local integration. This is unlikely to change without increased donor support and burden sharing.²⁰¹ Moreover, 'affluent countries lack the incentive and domestic support necessary to resuscitate large-scale resettlement programmes'²⁰². Repatriation, the process by which a refugee returns to their country of origin, continues to be the most preferred and promoted solution in the international refugee regime.²⁰³ As a result, repatriation is now considered crucial and the only realistic solution for the majority²⁰⁴ of refugees. This is largely due to the self-interests of key stakeholders including: states of origin, host and donor states, and the UNHCR. For the UNHCR to promote repatriation there are 'essential preconditions' that have to be met. These include: improved conditions in the country of origin in order for refugees to return in 'safety and dignity', 'voluntariness' of return, guarantee or sufficient assurances

²⁰¹M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, Cambridge University Press, 2013, p.8.

²⁰² To qualify, there is now a new European Agenda on Migration under review by the European Commission in order to improve the management of migration in Europe. One recommendation that the Commission adopted is for member states to resettle 20,000 people from outside the European Union over two years (EU) as identified by UNHCR, with financial support from the European Union (European Commission, 2015, May 27). See M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, Cambridge University Press, 2013, p.8.

²⁰³ This dissertation will use the definition of refugee regime outlined by Scalettaris as 'the institutions, legal instruments and norms composing the institutional framework which regulates the management of refugees.' See G. Scalettaris, 'Refugee Studies and the international refugee regime: a reflection on a desirable separation', *Refugee Survey Quarterly*, vol.26, no.3, 2007, p.49.

²⁰⁴M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, Cambridge University Press, 2013, p.1.

by the country of origin for the safety of returning refugees, access by the UNHCR to refugees and returnees, and, finally, a formal agreement between the involved parties.²⁰⁵

3.0.1 Refugees as a political problem to host states

The idea of refugees being perceived as a security threat is not a novel idea in refugee situations. Gil Loescher and Ann Dull, for instance, stresses the need to not only see refugees as a humanitarian problem but also as a political problem particularly in terms of security.

Too often refugees are perceived as a matter for international charity organizations, and not as a political and security problem yet refugee problems are in fact intensely political. The presence of refugees accelerates existing internal conflicts in the host countries. During the 1980's for example, the proliferation of arms following the influx of three million Afghans contributed to a resurgence of Pathan conquest in Pakistan. Elsewhere, Palestinian refugees upset delicate domestic balances in Lebanon and Jordan.²⁰⁶

The idea by Gil Loescher and Ann Dull that refugees should be seen not only as a humanitarian concern but more so as a political and security problem is supported by Myron Weiner who thinks that refugees may pose considerable political and security risks for host governments as they are a political force for their country of residence, and the way they react to the politics of host country, and their political relationship with the country of origin, have become important factors in influencing relations between the

²⁰⁵United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, UNHCR, 1996,para 3.1

²⁰⁶ G. Loescher and A. Dull, *The Global Refugee Crisis: a reference handbook*, Santa Barbara, Calif,ABC-CIIO,1994,p.7.

sending and receiving countries.²⁰⁷As a result host states, finds themselves in a dilemma between a humanitarian concern for refugees, and a realization that refugees can be a source of tension between locals and refugees and their respective African states.²⁰⁸

As argued by Weiner²⁰⁹ and Loescher²¹⁰ above, refugees may pose considerable political and security risks to the country of residence. In Dadaab for instance, most refugees and Kenyan Somalis interviewed said security has deteriorated within the camps and its environs over the past few months. Many reported sporadic cases of rape, night-time raids, allegedly, by Kenyan security services and occasional killings. An atmosphere of fear is spreading through the camps as international aid agencies limit their activities significantly. The majority of refugees claimed that they don't trust the Kenyan security forces alleging that they are the main culprits of insecurity in the camps. The Kenyan police in the camp deny these allegations and instead blame 'Al Shabaab sleeper cells and sympathizers' for the growing insecurity.²¹¹ While the Government of Kenya has not tabled concrete evidence to prove that Somali refugees could be contributing to the recent terror attacks in the country, Kenyan police officers operating in the camps continue to be

²⁰⁷ See M. Weiner, 'Migration and Development in the Gulf', *Population and Development Review*, Vol.8. No. 11, March 1982, pp.11 - 36.

²⁰⁸T. Hovet, 'Boundary disputes and tensions as a cause of refugees,' in *Refugee South of the Sahara* Hugh C. Brooks and Yassin El-ayouty(eds), Connecticut, Negro Universities Press,1970, p.29.

²⁰⁹M. Weiner, 'Migration and Development in the Gulf', *Population and Development Review*, Vol.8. no. 11, March 1982, pp.11 - 36.

²¹⁰G. Loescher, and A. Dull, *The Global Refugee Crisis: a reference handbook*, Santa Barbara, Calif,ABC-CIIO,1994,p.7

²¹¹Interview with Kenya police officials - Dadaab, August 2016(For anonymity police requested that dates of interview should not be captured because of the sensitivity of the matter)

targeted since December 2011 with Improvised Explosive Devices²¹² being reported across the camps making the Dadaab situation very complex. It is thought either the Al Shabaab²¹³ or their sympathizers are involved in the planning and or execution of these attacks seen as largely reprisal for the invasion of Somalia by the KDF in mid-October²¹⁴, 2011.

After seemingly shifting their attention from attacking the Kenyan police in the refugee camps, the terrorist element moved their battle to Nairobi, the capital city. Between 18 November and 19 December 2012, there were five separate grenade attacks in Eastleigh, killing 16 people and injuring 42, including Kenyan-Somali MP Yusuf Hassan.²¹⁵ The

²¹² Most attacks in the Dadaab refugee camps involve the use of IED's. For news of such cases see www.standardmedia.co.ke/mobile/?articleID=2000048578&story_title=Policeman%20dies,%20two%20others%20injured%20in%20Hagadera%20blast%20/business/; www.nation.co.ke/counties,Shabaab-suspects-arrested-Dadaab/-/110787/2890378/-/25qdw9z/-/index.html Accessed on 27th January 2016

²¹³Al Shabaab (the Movement for Youth Jihadists) is a militant organization based in Somalia. It became popular in 2012 when it pledged allegiance to Al Qaeda, an Islamist organization founded by Osama bin Laden in 1988. Al Shabaab fights for establishment of a Somali government under strict Islamic *Sharia* Law and considers any other governments not based in Islamic Law as 'infidel'. As a result, Al Shabaab has been fighting to topple the foreign-backed Somalia Federal Government (SFG). For details about Al Shabaab see S. Hansen, *Al Shabaab in Somalia: The history and ideology of militant Islamic group, 2005-2012* London, Hurst and Co., 2013.

²¹⁴ KDF pursued Al Shabaab inside Somalia from mid-October, 2011 after Government of Kenya blamed the terror group of cross border violations including abduction of foreign tourists, attacks on civilians and government installations. After the invasion, Al Shabaab intensified attacks inside Kenyan soils that has claimed lives of hundreds of civilians and security forces. For details see Yusuf, M., 'Kenya, Somali Refugees Exchange Blame for Attacks', *Voice of America*, 21 December 2012, www.voanews.com/a/kenya-somali-refugees-exchange-blame-for-attacks/1569769.html [Accessed 27 November 2017].

S. Lauren, *Repatriation as a Controversial Concept: The Case of Somali Refugees in Kenya*. Research paper supervised by Professor Delphine Nakache, School of International Development and Global Studies, University of Ottawa, July 2015.

S. Allison, 'World's largest refugee camp scapegoated in wake of Garissa attack', *The Guardian*, 14th April, 2015. Retrieved from <http://www.theguardian.com/world/2015/apr/14/kenya-garissa-dadaab-scapegoat-al-shabaab> [Accessed 27 November 2016].

²¹⁵ Yusuf Hassan is a Kenyan Member of Parliament representing Kamukunji constituency in Nairobi. He experienced serious injuries after an Improvised Explosive Device hit his entourage in Nairobi. Al Shabaab

attack on 18 November, targeting a public service vehicle, led to widespread rioting and violent reprisals against civilians of Somali origin.²¹⁶ While the refugees have vehemently denied involvement in terrorist activities, the Government of Kenya has often pointed an accusing finger at the Dadaab camp as a planning and training ground for terror elements.²¹⁷ Consequently, the Government of Kenya seems to have the support of the majority of Kenyans making repatriation a popular decision.²¹⁸ Critics of this government position on the other hand feel that the Government of Kenya is simply using refugees as scapegoats for a failed security system.²¹⁹

Apart from posing security threats to the host state, refugees also strain relations between the state of origin and the state providing asylum. The strained relations could therefore advance to aggression between the countries involved if not carefully handled. For instance, relations between Tanzania, Rwanda and Burundi were strained between 1994

was blamed for the attack as they are known to attack government installations and officials using firearms and explosives. See www.standardmedia.co.ke/article/2000163842/kamukunji-mp-yusuf-hassan-recounts-traumatic-journey-to-recovery-after-terror-attack[Accessed 27 November 2016].

²¹⁶Aljazeera, 'Kenyans riot against ethnic Somalis', Aljazeera - November 2012 <http://www.aljazeera.com/news/africa/2012/11/2012112021333440883.html>

²¹⁷The rhetoric of Somali refugees as a security threat is more the perception of Somali refugees as a threat rather than evidence based claims that refugees are the cause of insecurity. See J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009.

²¹⁸ Principal Secretary for Interior Dr. Karanja Kibicho in an official statement of Government of Kenya explaining why the Government of Kenya must repatriate thousands of Somali refugees in Kenya. He maintained that, 'As a country with limited resources, facing an existential terrorist threat, we can no longer allow our people to bear the brunt of the International Community's weakening obligations to the refugees'. Available at: www.interior.go.ke/index.php/2015-02-28-06-43-54/news/99-ps-karanja-kibicho-explains-why-the-government-is-shutting-down-refugee-camps[Accessed 30th January, 2018].

²¹⁹In fact, Somali refugees in Kenya have little to do with the recent terrorist attacks and Somalis have become a scapegoat by politicians. See Heritage Institute for Policy Studies(HIPS),*Hasty repatriation: Kenya's attempt to send Somali refugees home*, Mogadishu, HIPS, 2013.Retrieved from www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf[Accessed 10thJanuary, 2018]

and 1995 when Tanzania hosted thousands of refugees fleeing the genocide in Rwanda²²⁰ and chaos in Burundi.²²¹ This was captured by sentiments of the then Tanzania's Minister for Foreign Affairs as follows:

The presence of refugees is a source of tension in the relations between Tanzania and Burundi and to a certain extent Rwanda, arising from suspicions that the refugees are regrouping and training in warfare for attacking the countries of origin.²²²

It is therefore clear that even in a fully functioning and peaceful state such as Tanzania, the geo-political stakes inherent in a refugee situation are such that the security of camps and border areas cannot be reduced to a mere question of law enforcement.²²³

Kenya thus is not the only country purporting that refugees are a threat to its national security. There are no studies that have established that refugees have a high affinity to crime or violence compared to the citizens. The claim by many host states that refugees are a threat to their 'national' security seems to be a more general way of scapegoating as

²²⁰J. Mwakasege, *The Impact of Refugees on Host Communities: The case of Kasulu, Ngara and Karagwe*. A Report of an Oxfam Sponsored Research Project, presented at the International Workshop on Refugee Crisis in the Great Lakes Region, Arusha, Tanzania, 16-19 August 1995, 13

²²¹J. Mwakasege, *The Impact of Refugees on Host Communities: The case of Kasulu, Ngara and Karagwe*. A Report of an Oxfam Sponsored Research Project, presented at the International Workshop on Refugee Crisis in the Great Lakes Region, Arusha, Tanzania, 16-19 August 1995, 13. The Burundi civil war was an armed conflict lasting from 1993 to 2006. The civil war was the result of long standing ethnic divisions between the Hutu and the Tutsi ethnic groups in Burundi. The war escalated following the assassination of Burundi's first democratically elected Hutu president, Melchior Ndadaye, by Tutsi extremists. See also Bhavnani, R., and Backer, D., 'Localized Ethnic Conflict and Genocide: Accounting for Differences in Rwanda and Burundi', *Journal of Conflict Resolution*, vol.44. no. 3, 2000, pp.283-306.

²²²J. Mwakasege, *The Impact of Refugees on Host Communities: The case of Kasulu, Ngara and Karagwe*. A Report of an Oxfam Sponsored Research Project, presented at the International Workshop on Refugee Crisis in the Great Lakes Region, Arusha, Tanzania, 16-19 August 1995, 13

²²³ Canadian Council for Refugees, *Preserving the Civilian Character of Refugee Camps: Lessons from Kigoma Refugee Programme in Tanzania*, CCR vol.9 no.3, November 2000, 4.

these claims have never been accompanied by legal actions that can secure convictions in courts of law. In fact refugees have always sought justice in courts²²⁴ whenever they face blanket harassment and condemnation from state machinery and have often won.

It is evident that the host country and refugees often mistrust each other with host states fearing that hosting refugees may adversely affect them politically. Even though refugees are welcomed by host states, the reception in most cases is cold and full of suspicion.²²⁵ Host countries have become reluctant to host refugees because of the fear that the refugees are no longer a short-term challenge, as earlier thought in the 1940s during the Second World War. The unquestionable assumption in the 1940's was that refugees were in their host countries temporarily and that they would go back to their home countries as soon as the Second World War ended. As a result, they received an immense sympathy. For instance, when Palestinian refugees began flooding into their neighbouring Arab states as of spring of 1948 they received a warm welcome. The prolonged refugee stay however put undue strain on already fragile economies and attitudes in the host countries began to shift.²²⁶

The end of Cold War seemed to have ushered in an era where refugee sympathy and hospitality began to wane:

²²⁴S. Ndonga, 'Court overturns order to register refugees in camps', 26th July, 2013, *Capital News*. Retrieved from <http://www.capitalfm.co.ke/news/2013/07/court-overturns-order-to-register-refugees-in-camps/> [Accessed 28th March 2015].

²²⁵P. Kirui, P., and J. Mwaruvie, ' The Dilemma of hosting refugees: A focus on the insecurity in North-eastern Kenya', *International Journal of Business and Social Sciences*, vol.3.no.8,2012,pp.161-171.

²²⁶O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. (Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009,, p.170.

As has often been remarked, with the end of the Cold War, the political and ideological value attaching to refugees has waned. The attachment to upholding refugees' rights which may have previously characterized the approach to asylum is in fierce competition with tendencies towards the most restrictive and minimalist legal regimes, policies and practices ...It is difficult to expect that these trends will not be observed in Africa, where the underlying social and economic constraints are even more compelling. Indeed, the tendency to emulate these trends is said by some already to be in evidence.²²⁷

The other reported political problem that states face when hosting refugees is the perennial conflict between refugees and the host community. Kirui and Mwaruvie, while writing on the dilemma of hosting Somali refugee in Kenya, assert that:

In Dadaab for example, the Kenyan Somalis feel the refugees are given special attention than them because they receive assistance from humanitarian organization like UNHCR and other NGO"s. Refugees are given food, medical attention, and education among other social services. Majority of Kenyan Somalis cannot afford this and therefore view the refugees (who are also Somalis) as enemies who are taking 'Milk and Honey' while they starve in their motherland.²²⁸

Interestingly, this kind of hostile relationship between the local Somali refugee hosting community in Dadaab refugee camp is also replicated in Kakuma²²⁹ refugee camp. In

Kakuma:

²²⁷UNHCR, 'Issues and Challenges in International Protection in Africa', Special Issue, *International Journal of Refugee Law*, 55, at pp. 69-70

²²⁸P. Kirui, and J. Mwaruvie, 'The Dilemma of hosting refugees: A focus on the insecurity in North-eastern Kenya', *International Journal of Business and Social Sciences*, vol.3.no.8,2012,pp.164

²²⁹Kakuma refugee camp is located in North-western Kenya hosting mainly Sudanese refugees. The Sudanese refugees fled the civil war in Sudan and currently the civil war that threatens the young state of South Sudan.

While refugees receive international aid, the Turkana (who are just as poor) do not. Unfortunately, this causes an imbalance that has resulted in the host community feeling hostile and blaming their problems on refugees. It also raises fundamental questions about human rights and equality since, in this case, the refugees who receive free shelter, food, firewood and healthcare, have better conditions than their hosts.²³⁰

Similarly, in Chad and Darfur, 'where there are large congregations of displaced persons in an arid environment, there are huge demands on the scarce local water resources and this gives rise to friction with the local communities.'²³¹ In Ghana, Liberian refugees are widely perceived by Ghanaians as the cause of recent armed robberies and wife stealing. In addition, the Ghanaian populations negatively portray Liberians claiming they engage in illegal activities such as prostitution, drugs robbery and gambling.²³² These allegations are however more about scapegoating and of 'othering' as an excuse for their current impoverishment. In Iran, the Iranian government claims that illegal Afghans pose threats to its national security especially given their possible contact with insurgents and narcotic traffickers near the Afghan border.²³³ In all these cases, the assumption is that refugees are a burden to the host state and involved in illegal activities; an assumption that is lacking in both merit and substance.

²³⁰E. Aukot, 'It is better to be a Refugee than a Turkana in Kakuma: Revisiting the Relationship between Hosts and Refugees in Kenya', *Global Movements for Refugees and Migrant Rights*, Vol.21, no.3,2003,74.

²³¹A. Cronin et al., 'A Review of water and sanitation provision in refugee camps in association with selected health and nutritional indicators-the need for integrated service provision', *Journal of Water and Health*, vol. 6,2008,p.1

²³²G. Porter, et al., 'Linkage between Livelihood Opportunities and Refugee-Host Relations: Learning from the Experience of Liberian Camp-based Refugees in Ghana', *Journal of Refugees Studies* vol.21,2008,p.2

²³³B. Koepke, *The Situation of Afghans in the Islamic Republic of Iran Nine Years After the Overthrow of the Taliban Regime in Afghanistan*, Washington, D.C., Middle East Institute, 2011,p. 2.

However, Oroub El-Abed differs with such assumptions often held by populations and host governments that refugees are of no help to the host government but a burden. She asserts that refugees can be of benefit to the host governments if they are allowed to work unhindered and become productive members of the society. She however admits that most governments have been reluctant to incorporate refugees in their national systems.²³⁴ A good example in support of Oroub-El-Abed's argument is that of Palestinian refugees who have been integrated with the Egyptians to an extent that they are virtually undistinguishable.²³⁵ In this case therefore Palestinian refugees in Egypt are no longer perceived as a security threat by Egyptians.

3.1 The evolving refugee policy in Kenya: from laissez-faire to restrictive

Before discussing Kenya's perception on the safety of Somalia as a pre-condition for repatriation, it is paramount to briefly highlight how the Government of Kenya has been changing her refugee policy with a bias towards a more restrictive approach. While it is important to limit ourselves to the objective of the study as to the perception of Government of Kenya on the safety of Somalia, we must remember that states tend to consider their national interests first before any international obligations. Although weak states might seek to appease international community to bolster its legitimacy, it is an exception rather than the rule. This in essence means that understanding Kenya's refugee policy helps explain the perception of Kenya on the safety of Somalia. If, for instance,

²³⁴O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.70.

²³⁵B. Laurie, 'Nassir's Egypt and the Re-emergence of the Palestinian National Movement', *Journal of Palestinian Studies*, vol.17, no.2, winter1988, p.85

Kenya considers Somali refugees as a burden, then she will push for their repatriation, regardless of whether Somalia is perceived as safe or otherwise, as a way of easing the burden. In any case, a positive attitude towards refugees may generally make host states reluctant to push for repatriation and especially if they consider refugees as productive members of the society.

Kenya's refugee policies have changed considerably, from a relatively laissez-faire approach, to that of increasing restrictions and containment. From 1963 to 1989, there were relatively few refugees in the country, with only up to 15,000 at any given point.²³⁶The Kenyan government had an open asylum policy and refugees could move and settle freely within the country, and they had the right to work.²³⁷The government also did not have an established national refugee policy or a legal framework in place prior to 2006, although an Eligibility Committee²³⁸, which included representatives of the Ministry of Home Affairs, the Immigration Department and observers from the UNHCR,

²³⁶P. Kagwanja, 'Strengthening local relief capacity in Kenya: Challenges and prospects' In M.K Juma & A. Suhrke (Eds.), *Eroding local capacity: International humanitarian action in Africa*, Sweden, Nordic Africa Institute, 2002, pp. 94.

²³⁷E. Freudenthaler, 'Refugee rights in Kenya between theory and practice', *Vienna Journal of African Studies*, Vol.12, no. 23, 2012, pp. 107-133.

Milner, J., *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009.

²³⁸The Eligibility Committee was an *ad hoc* committee that vetted and scrutinized applications to determine whether one qualified to be granted refugee status. See Wagacha, J. & Guiney, J., 'The plight of urban refugees in Nairobi, Kenya' in Hollenbach, D. (Ed). *Refugee Rights: Ethics, Advocacy, and Africa*, Washington, DC, Georgetown University Press, 2008, pp. 92-101.

Human Rights Watch, *Hidden in plain view: Refugees living without protection in Nairobi and Kampala*, 2002. Retrieved from <http://www.hrw.org/reports/2002/11/21/hidden-plain-view> [accessed 12 January 2016].

conducted refugee status determination (RSD) interviews on an individual basis.²³⁹ An initial shift in Kenyan policy towards refugees was sparked by a severe increase of asylum seekers from neighbouring countries. This included approximately 300,000 Somalis who fled to Kenya from 1991 to 1993²⁴⁰, after the fall of the Siad Barre regime and ensuing civil war. The Government of Kenya adopted a general encampment policy²⁴¹ and justified this approach due to the magnitude of refugees seeking asylum in Kenya, but, as we discuss further, other factors were at play.²⁴² The Kenyan government and its citizens started developing negative views of refugees, which led to increasing xenophobia.²⁴³ While the leadership of refugee assistance was assumed by international agencies and NGOs²⁴⁴, the Government of Kenya began to retake control of refugee management with the enactment of *Refugee Act*²⁴⁵ of 2006, that also created a Department

²³⁹J. Wagacha, & J. Guiney, 'The plight of urban refugees in Nairobi, Kenya' in Hollenbach, D. (Ed). *Refugee Rights: Ethics, Advocacy, and Africa*, Washington, DC, Georgetown University Press, 2008, pp. 92-101. Human Rights Watch, *Hidden in plain view: Refugees living without protection in Nairobi and Kampala*, 2002. Retrieved from <http://www.hrw.org/reports/2002/11/21/hidden-plain-view> [accessed 12 January 2016].

²⁴⁰A. Kumar, *Human rights: Global perspective*, New Delhi, Sarup & Sons, 2002, p.163

²⁴¹ Kenya Refugee Act No.13 of 2006. Before this Refugee Act was enacted, Kenya assumed an unwritten policy of encampment where refugee movement was restricted to the 'camps' as their 'designated area' and were not allowed to move outside the designated areas without express permission from government officials especially from ministries Interior and migration.

²⁴²J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.90

²⁴³G. Loescher, & J. Milner, 'The long road home: Protracted refugee situations in Africa', *Survival*, vol.47, no. 2, 2005, p.154

Campbell, E., *Formalizing the informal economy: Somali refugee and migrant trade networks in Nairobi*. Geneva, Switzerland, Global Commission on International Migration, 2005, p.5

²⁴⁴P. Kagwanja, 'Strengthening local relief capacity in Kenya: Challenges and prospects' In M.K Juma & A. Suhrke (Eds.), *Eroding local capacity: International humanitarian action in Africa*, Sweden, Nordic Africa Institute, 2002, pp. 94-115.

²⁴⁵Kenya Refugee Act No.13 of 2006. Available at http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf [Accessed 31st January, 2018]

of Refugee Affairs²⁴⁶ (DRA). Although in theory this Refugee Act implements the 1951 *Refugee Convention*, the 1967 *Protocol*, and the 1969 *OAU Convention*, this did not translate in practice.²⁴⁷The Government of Kenya took a more restrictive approach to refugee management than the UNHCR had, by implementing a relocation directive²⁴⁸ in December 2012, which ended all urban refugee operations²⁴⁹ and ordered refugees to relocate to the designated camps. This restrictive approach has been informed by Kenya's negative perception of Somalis and has been shaped by both historical and contemporary factors. The Government of Kenya has been pressuring for the repatriation of Somali refugees. The Kenyan government has propagated the idea of Somali refugees as a 'burden' and a 'security threat' in order to justify their actions in the name of national security. Responding to questions on one popular TV station in Kenya regarding the perceived premature push for repatriation of Somali refugees by Government of Kenya, the Interior Principal Secretary maintained that, 'Nobody should lecture us about refugees, we have hosted them for about 25 years, we continue to host them, we are not

²⁴⁶Kenya Refugee Act No.13 of 2006, Clause 6(1).

²⁴⁷S. Pavanello, Elhawary, E., & Pantullano, S., *Hidden and exposed: Urban refugees in Nairobi, Kenya* ,HPG Working Paper, London, Humanitarian Policy Group Overseas Development Institute, 2010,p.15.

²⁴⁸See Office of the President, *Relocation of Urban Refugees to Officially Designated Camps*, 16 January 2013

In December 2012, Kenya's Department of Refugee Affairs issued a statement that all refugees in urban centres must go to the camps. In January 2013, a letter was issued from the Office of the President stating that

18,000 refugees should be rounded up, held in Thika football stadium near Nairobi, and then transferred to the camps, a first step towards repatriation.

²⁴⁹Refugees were initially allowed to reside in Kenyan urban areas as long as they could afford to sustain themselves. The relocation directive by Department of Refugee Affairs also banned any existing such arrangements insisting that all refugees should reside in designated camps in North-eastern Kenya(Dadaab) or North-western Kenya(Kakuma). See<https://www.hrw.org/news/2013/01/21/kenya-dont-force-55000-refugees-camps>[Accessed 31st January, 2018].

talking about closing Kakuma, because it doesn't pose as much threat to our national security as much as Dadaab is causing'²⁵⁰. This hard line stance by a government official is an indication of the shifting paradigm in refugee policy from a welcoming to a more restrictive approach. However, this has not occurred in a vacuum, as there are historical factors, which have also played a role in Kenya's increasingly restrictive refugee policies leading up to, and following, the signing of the Tripartite Agreement.

The restrictive approach adopted by Kenya seems to be a new trend that many countries are now adopting. In the extreme, huge influxes of refugees fleeing conflict in Syria have literally compelled many European countries to close their borders in a bid to discourage many millions of refugees from flowing to Europe.²⁵¹ Others have even argued that the in(famous) Brexit vote that saw Britain withdraw from the European Union may have partly been informed by the feeling among the Britons to want to control their borders from refugees and other migrants.²⁵² Though to a larger extent a politicized matter during the Brexit referendum, the United Kingdom Independence Party(UKIP) leader, Nigel Farage, may have appropriated the fear of mass refugees entering the UK by

²⁵⁰ The interior PS While responding to a K24 journalist at the 9pm News bulletin on 11th May, 2016.He was responding to accusations leveled against the Government of Kenya by the KNCHR and UNHCR that the government's decision to repatriate the Somali refugees was against human rights and the general refugee law.

²⁵¹ 'The European Union and the migration Crisis', Available at <http://publications.europa.eu/webpub/com/factsheets/migration-crisis/en/> [Accessed 31st January 2018]

²⁵²It is generally perceived that the migrant crisis in Europe especially since 2015 may have created a conducive political environment for those advocating for a Brexit so as to have more control of their borders unlike while in the EU bloc where they are bound by the blocs decision to open their borders. UKIP leader Nigel Farage during the Brexit vote had used an October 2015 photograph of hundreds of refugees crossing the Croatia-Slovenia border for a 'Vote Leave' campaign poster emblazoned with the words: 'Breaking Point', The report by Kristy Siegfried is Available at www.irinnews.org/analysis/2016/06/27what-does-brexit-mean-refugees [Accessed on 20th September 2016].

campaigning for Brexit in order to, 'break free of the EU and take back control of our border'.²⁵³ Many countries, therefore, are adopting a more restrictive approach to refugees—a clear indication that they are no longer welcome.

3.1.1 Negative historical perceptions of the Government of Kenya towards Somalis.

Kenya has had a history of mistrust and suspicion with Somalia since her independence in 1963 when Somalia claimed part of Kenyan territory to form a unified Somalia.²⁵⁴ This led to the *shifita*²⁵⁵ wars between 1963 and 1967, whereby ethnic Somalis in North Eastern Province began guerrilla warfare in order to separate from Kenya. Although the *shifita* wars ended with the signing of an agreement²⁵⁶ in 1967, in the 1980s, the Kenyan government continued to carry out operations in North Eastern Province to remove any remaining *shifita* 'elements'. As a result, 'All Somalis were portrayed as a threat, and their repression was justified on grounds of nation security'.²⁵⁷ Consequently, the Government of Kenya has historically had a 'conflictual' relationship with the then North Eastern Province²⁵⁸ (formerly Northern Frontier District) in Kenya, where there has been a

²⁵³ This statement was appropriated by UKIP leader Nigel Farage during the Brexit vote. He had used an October 2015 photograph of hundreds of refugees crossing the Croatia-Slovenia border for a Vote Leave campaign poster emblazoned with the words: 'Breaking Point'. The report by Kristy Siegfried is Available at www.irinnews.org/analysis/2016/06/27what-does-brexit-mean-refugees [Accessed on 20th September 2016].

²⁵⁴ J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.102.

²⁵⁵ J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.102

²⁵⁶ 'Arusha Agreement on Ending of Kenya-Somali Border Hostilities. Somali-Ethiopian Agreement', Keesing's Record of World Events (Formerly Keesing's Contemporary Archives) vol.13, November 1967, p.22386

²⁵⁷ J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.102

²⁵⁸ North Eastern province (before 2010 Constitution of Kenya) comprises of the current Garissa, Wajir and Mandera Counties. This region was called the Northern Frontier District in colonial Kenya and was generally under a curfew and was regarded as a dangerous region because of bandits and general impunity

significant population of ethnic-Somalis.²⁵⁹This stems back to the ‘scramble for Africa’²⁶⁰ where colonial powers drew borders and divided the Somali people into five parts, with one such part being North Eastern Province, Kenya. The Somali state called for the inhabitants of the North-eastern Province, then called the Northern Frontier District to secede from Kenya and join Somalia, Djibouti and parts of the Ethiopian Ogaden to form ‘Greater Somalia’.²⁶¹This may have sowed the mistrust between Somalis and Kenyans, and may have contributed to Kenya’s restrictive approach towards Somali refugees. Consequently, from independence in 1963 until 1992, the North-Eastern Province, bordering Somalia, where the Dadaab refugee camp is located, was placed under a state of emergency.²⁶²

3.1.2 Perception of the Government of Kenya towards Somali refugees as security threat

in the region. With the adoption of the Constitution of Kenya 2010, the NEP was divided into the above three counties.

²⁵⁹J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009,p.101

²⁶⁰The Berlin Conference of 1884–1885 marked the climax of the European competition for territory in Africa, a process commonly known as the [Scramble for Africa](#). During the 1870s and early 1880s European nations such as Great Britain, France, and Germany began looking to Africa for natural resources for their growing industrial sectors as well as a potential market for the goods these factories produced. See <http://www.oxfordreference.com/view/10.1093/acref/9780195337709.001.0001/acref-9780195337709-e-0467>[Accessed 31st January 2018]

²⁶¹A. Abdi, ‘Refugees, Gender-Based Violence and Resistance: A Case Study of Refugee Women in Kenya’, *Women, Migration, and Citizenship: making local, national and transnational connections*, Oxford, Ashgate, 2006, pp. 231-250

²⁶²A. Abdi, ‘Refugees, Gender-Based Violence and Resistance: A Case Study of Refugee Women in Kenya’, *Women, Migration, and Citizenship: making local, national and transnational connections*, Oxford, Ashgate, 2006, pp. 231-250

Somali refugees are primarily hosted in Dadaab Refugee Camp²⁶³, which began operation between 1991 and 1992, and is located only 100km from the Somali-Kenyan border in Garissa County, North Eastern Province (NEP), Kenya. Conflict in Somalia started when tyrant Mohammed Siad Barre was ousted in 1991. Inter – clan conflicts that followed gave way in early 2007 to an Islamic insurgency – prompted by Ethiopian invasion – which as of 2009 killed an estimated 18,000 civilians.²⁶⁴

The presence of Somali refugees in Dadaab in northern Kenya seems to have legitimized the perceived fear that refugees could be more of a political and security problem as much as of humanitarian concern. According to Garissa District Development Plan (GDDP) 1994-1996, the influx of refugees into the district resulted in insecurity as ‘sophisticated weaponry found their way into the district’²⁶⁵ through the porous Kenya-Somalia border. The assumption here is that militants sneak in weapons into Kenyan refugee camps in the guise of being refugees. Consequently, ‘banditry, cattle rustling and general violence’²⁶⁶ in the district increased and hence adversely affecting the supervision of development programmes.²⁶⁷

²⁶³ Although usually referred to as Dadaab Refugee Camp, this refugee camp complex is comprised of multiple camps that surround UNHCR’s sub-office in the town of Dadaab. The major camps that make the Dadaab complex are Hagadera, Ifo and Dagahaley

²⁶⁴ <http://www.monstersandcritics.com/news/africa/features/article>

²⁶⁵ See Republic of Kenya, *Garissa District Development Plan (1994-1996)*, Nairobi, Government printer, p.81.

²⁶⁶ See Republic of Kenya, *Garissa District Development Plan (1994-1996)*, Nairobi, Government printer, p.59.

²⁶⁷ See Republic of Kenya, *Garissa District Development Plan (1994-1996)*, Nairobi, Government printer, p.81. The former Garissa District hosts Dadaab refugee camps and is currently referred to as Garissa County following the promulgation of the constitution in 2010 that changed administrative names and boundaries

This narrative by the Government of Kenya on the insecurity caused by the refugees is further noted by the *GDDP report of 2002-2008* which notes, in part, that Dadaab and Jarajila divisions are a bit insecure compared to others because of the presence of refugees in Jarajila and Dadaab, which has made the divisions adjacent to be insecure.²⁶⁸ Besides that, the GDDP report (2008-2012) on insecurity posed by the refugee settlement in Dadaab accuses the refugees of destroying the environment and of being a major cause of insecurity in the adjacent divisions.²⁶⁹ These reports, however, seem to lack evidence and substance and are more general in nature.

Recently in an interview with the National Television on May 11, 2016, the Principal Secretary (PS) for Interior²⁷⁰ Dr. Karanja Kibicho, while responding to News Anchor Eric Njoka argued that, 'we are not talking about closing Kakuma because it doesn't pose as much threat to our national security as much as Dadaab is causing'²⁷¹. He said that,

The six hundred thousand refugees in this country are not all terrorists...but the existence of the camp has provided sufficient environment for cells that harbor terrorists who continue causing harm to our country.²⁷²

²⁶⁸ Republic of Kenya, Ministry of Finance and Planning, *Garissa District Development Plan 2002-2008*, Nairobi, Government Printer, p.16.

²⁶⁹ Republic of Kenya, Office of the Prime Minister, Ministry of State for Planning, National Development and Vision 2030, *Garissa District Development Plan 2008-2012*, (Nairobi: Government Printer), 30.

²⁷⁰ This is the Ministry of Internal Security whose portfolio includes that of refugees in Kenya.

²⁷¹ The Principal Secretary(PS) Dr.KaranjaKibicho while responding to an interview with Eric Njoka on 11th May, 2016 at the K24 TV Studios. The PS was explaining the position of the Government of Kenya concerning her decision to close Dadaab refugee camps citing the threat to national security that militants in the camp poses.

²⁷² The Principal Secretary (PS) Dr.Karanja Kibicho while responding to an interview with Eric Njoka on 11th May, 2016 at the K24 TV Studios.The PS was explaining the position of the Government of Kenya concerning her decision to close Dadaab refugee camps citing the threat to national security that militants in the camp poses.

Reiterating the position of the Government of Kenya to close down Dadaab refugee camp, the Interior CS, Joseph Nkaissery asserted that, 'the decision to close Dadaab camp is final'.²⁷³ This depicts arrogance and unilateral decisions of the Government of Kenya when dealing with Somali refugees. Such tough statements by the government have become more of a 'knee-jerk' reaction to failing security systems and have often been successfully challenged in courts.²⁷⁴ In February 2017, Kenyan High Court judge, Justice John Motivo, suspended the Government of Kenya decision to close down Dadaab refugee camps terming it 'discriminative'.²⁷⁵

3.1.3 Rationale for the push for repatriation by Government of Kenya since 2011.

The increasingly restrictive refugee regime of the Kenyan government and the current repatriation efforts are as a result of the perception of Somali refugees as a national security threat. The perception of Somalis in Kenya as a security threat became particularly heightened after multiple attacks in Kenya by Al Shabaab. These attacks occurred more frequently after Kenya sent troops into Somalia in 2011 as part of *Operation*

²⁷³ Cabinet Secretary (CS) Joseph Nkaissery while receiving a report by the task force constituted on 11th May 2016 to recommend the best way the Government of Kenya was to carry out the repatriation of Somali refugee. The CS was addressing the press on 31st May 2016. This was aired at NTV on 31st May 2016.

²⁷⁴ S. Ndonga, 'Court overturns order to register refugees in camps', 26th July, 2013, *Capital News*. Retrieved from <http://www.capitalfm.co.ke/news/2013/07/court-overturns-order-to-register-refugees-in-camps/> [Accessed 28th March 2015].

²⁷⁵ 'Kenya vows to appeal verdict blocking Dadaab camp closure', Daily Nation, 9th February, 2017, Available at <https://www.nation.co.ke/news/High-Court-cancels-closure-of-Dabaab/1056-3806030-7enmgdz/index.html> [Accessed 28th March 2015].

*Linda Nchi*²⁷⁶, a Swahili for ‘Operation protect country’ with Al Shabaab promising retaliation, threatening attacks on Nairobi and to bring war to Kenya.²⁷⁷ It seems clear that the threat by Al Shabaab was real, as one Amnesty International report argues that:

Since then, Kenya has experienced an increase in security incidents including bombings and attacks using hand-grenades and improvised explosive devices. Many have taken place in north-eastern Kenya, including in the Dadaab refugee camps, as well as in Nairobi, particularly in Eastleigh, home to more than 100,000 Kenyan Somalis and Somali refugees and asylum-seekers. These attacks have resulted in dozens of deaths and hundreds injured. On 21 September 2013, Al Shabaab claimed responsibility for an attack in Nairobi’s Westgate shopping mall which lasted for four days, killing 67 people and injuring more than 200 others.²⁷⁸

To capture the embedded Government of Kenya’s perception towards refugees as a ‘source of terrorism’, the then Cabinet Secretary for Interior and Coordination of National Government²⁷⁹, Joseph Ole Lenku, said: ‘some of these refugees have abused our hospitality and kindness to plan and launch terror attacks from the safety of refugee camps. This cannot and shall not be allowed to continue anymore’.²⁸⁰ One Member of Parliament described Kenya’s refugee camps as ‘a nursery for terrorists’.²⁸¹ Mr. Lenku

²⁷⁶Operation ‘*Linda Nchi*’ is the codename for a co-ordinated military operation between the Kenyan military and the Somali military that began on 16 October 2011, when troops from Kenya crossed the border into the conflict zones of southern Somalia. Kenya had accused Al Shabaab of violating its border and kidnapping foreign tourists in her soils although it made it clear that Kenya was not at war with Somalia as a country. ‘*Linda nchi*’ is a Swahili word meaning ‘protect our country’. See Migue, T., *Military Diplomacy: A Case Study of Kenya Defence Forces in Somalia (2011-2012)*, A Research Project Submitted in Partial fulfillment of the Degree of Master of Arts in International Studies, University of Nairobi, May, 2013.

²⁷⁷BBC News, Somali militants Al-Shabab threaten Kenya retaliation, 17 October 2011, <http://www.bbc.co.uk/news/world-africa-15342091>, [Accessed 14th December, 2013].

²⁷⁸ See Amnesty International Report, *No place like home: Returns and relocations of Somalia’s displaced*, London, Amnesty International, 2014. [Accessed 19th December, 2015]

²⁷⁹This is the Ministry of Internal Security whose portfolio includes that of refugees in Kenya

²⁸⁰Official: Some refugees plan attacks from Kenya, <http://news.yahoo.com/official-refugeesplan-attacks-kenya-125845448.html> [Accessed 19th December, 2015]

²⁸¹See MP calls for closure of Dadaab Refugee Camp, 30 September 2013, <http://www.standardmedia.co.ke/?articleID=2000094572>, [Accessed 14th December, 2013].

and the MP were reacting to the Westgate Mall attack on the 21st September 2013. It is this concern that led Kenya to seek a legal framework that would pave way for the repatriation of Somali refugees within the international refugee regime²⁸²-the 1951 UN Convention Relating to status of Refugees. The active military engagement of Kenya in Somalia since mid-October 2011 in hot pursuit²⁸³ of Al Shabaab militants it had accused of violating her borders marked the turning point in Kenya's long standing policy of non-aggression. While Kenya made it clear that it was not at war with Somalia, the presence of Kenyan soldiers in Somalia appears to signal a new chapter of heightened militarization between Kenya and the Somalia-based militia, Al Shabaab.

While there is no documented evidence indicating that refugees are involved in terror activities, it is evident that the Al Shabaab terror cells and sympathizers have encroached upon the Dadaab camps. This is because there are recorded terror activities²⁸⁴ in Dadaab camps but which may not directly involve refugees. Terror cells may hide in the camp from where they plan and launch attacks.

²⁸² Although there are many instruments regarding refugee affairs nationally and regionally, the UN 1951 Convention Relating to Status of Refugees is the blue print policy document as it was adopted by UN. Many countries and regions domesticate their refugee laws based on the provisions of this document. See United Nations High Commissioner for Refugees, *States parties to the 1951 convention relation to the status of refugees and the 1967 protocol*, 2011. Retrieved from <http://www.unhcr.org/3b73b0d63.html> [Accessed 24th April, 2015].

²⁸³T. Migue, *Military Diplomacy: A Case Study of Kenya Defence Forces in Somalia (2011-2012)*, A Research Project Submitted in Partial fulfillment of the Degree of Master of Arts in International Studies, University of Nairobi, May, 2013.

²⁸⁴ <https://www.unhcr.org/news/latest/2011/12/4ef1ec326/twin-blasts-dadaab-raise-concerns-worsening-security.html>

Following the escalating terror attacks, with some allegedly being traced to the Dadaab refugee camp, a tripartite agreement was signed between the governments of Somalia and Kenya and the UNHCR on 10th November 2013 following months of negotiations to pave way for voluntary repatriation. The agreement establishes the framework governing the voluntary repatriation of Somali refugees over the next three years.²⁸⁵ It is on the basis of this TA that the Government of Kenya has maintained that the Dadaab camps should be closed by 30th November 2016, three years into the TA. A pilot phase was to take place from January to June 2014. During that time, an estimated 10,000 Somali refugees in Kenya were to be supported to return to Luuq in Gedo region, Baidoa in Bay region, and Kismayu in Lower Juba region.²⁸⁶

As expected, repatriation has had mixed results. Based on statistics from UNHCR, 72,712²⁸⁷ refugees had been repatriated between 2014 and 22nd December, 2017. This is a relatively low number as it is less than 20% of the target 500,000 Somali refugees based in Dadaab. Those willing to repatriate are either airlifted or transported by road in a UNHCR and Government of Kenya partnership and given a reinstallation stipend of

²⁸⁵Tripartite Agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia, and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees living in Kenya, 2013 (Tripartite Agreement), Art 29, can be found at <http://www.unhcr.org/528102b49.html> [accessed 21.11.15].

²⁸⁶UNOCHA, Somalia Humanitarian Bulletin, November 2013.

²⁸⁷<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2018/01/Voluntary-Repatriation-Analysis-22-December-2017.pdf>[Accessed 31st January, 2018]

USD 600²⁸⁸. Returnees in Somalia are also supported by UNHCR and other NGO's²⁸⁹, like the America Refugee Committee, who provide training on life skills, build capacity in livelihoods and may provide limited financial support for startup ventures. There are reports, however, that most returnees 'have found it difficult to secure reliable food, health care and shelter, and Hassan, like 75 other families, are affected by ongoing land disputes in Kismayo'.²⁹⁰ This brings to question the sustainability of the repatriation process.

In response to the string of attacks, the Government of Kenya had earlier on 13 December 2012, through Kenya's Department of Refugee Affairs, announced an intention to implement a forced encampment policy. All 55,000 urban refugees were to move to the refugee camps in the north of the country. It was stated that 'due to this unbearable and uncontrollable threat to national security, the government has decided to put in place a structure encampment policy'.²⁹¹ This was later cited by the government as a first step towards full repatriation.²⁹²

²⁸⁸O. Burrows, 'UNHCR seeks Sh.11.6 billion to repatriate Dadaab refugees', Capital News, 26th July, 2016. Available at <https://www.capitalfm.co.ke/news/2016/07/unhcr-seeks-sh11-6bn-repatriate-dadaab-refugees/> [Accessed 23rd June 2017]

²⁸⁹<http://www.unhcr.org/afr/news/stories/2017/12/5a310e394/support-programmes-give-somali-returnees-chance-rebuild.html> [Accessed 31st January, 2018]

²⁹⁰M. Yusuf, 'Returning Somali Refugees Find it Hard to Build New Lives', Voice of America News, 18th November, 2016, Available at <https://www.voanews.com/a/returning-somali-refugees-find-it-hard-to-build-new-lives/3602636.html> [Accessed 31st January, 2018].

²⁹¹Department of Refugee Affairs, Press Statement, 13.12.12, on file with Amnesty International

²⁹²Letter from the Office of the President – Provincial Administration and Internal Security, Relocation of urban refugees to officially designated camps, 16 January 2013, on file with Amnesty International.

In January 2013, the Kenyan legal aid organization *Kituo Cha Sheria*²⁹³ filed a petition with the High Court in Nairobi challenging the constitutionality of the Government of Kenya plan of restricting all refugees, including urban refugees, to the camps. On 26 July 2013, the High Court quashed the plan on the basis that forcing all refugees to camps would violate their dignity as well as numerous other rights under Kenyan law, such as their freedom of movement. The Court stated that ‘The aggressive pursuit of such a policy may have the effect of constructively repatriating urban refugees back to the countries from which they had fled.’²⁹⁴ It further stated that ‘the implementation of the policy may well lead to a situation that forces some of the petitioners to leave the country for fear of proceeding to camps or being exposed to conditions that affect their welfare negatively.’²⁹⁵

The judgment by the High Court on 26 July 2013 that annulled the forced encampment policy on refugees, as directed by the Government of Kenya was no doubt a relief to many refugees. This relief judgement came even after refugee registration and other refugee operations in urban areas were halted and refugees were expected to relocate to the designated refugee camps as per the government’s directive²⁹⁶ in December, 2012. It

²⁹³Kituo Cha Sheria is a Legal Aid NGO that helps individuals, groups of people or organizations get legal advice especially on matters of human rights. It works across Kenya to help the disadvantaged get justice, See <https://kituochasheria.or.ke/> [Accessed 21st April 2015].

²⁹⁴Kenya High Court Judgement, Constitutional and Human Rights Division, Petition No 19 of 2013 consolidated with Petition No 115 of 2013, para 72.

²⁹⁵Kenya High Court Judgement, Constitutional and Human Rights Division, Petition No 19 of 2013 consolidated with Petition No 115 of 2013, para 73.

²⁹⁶<https://reliefweb.int/sites/reliefweb.int/files/resources/Government%20Directive%20Leads%20to%20Severe%20Abuses%20and%20Forced%20Returns.pdf>

seem clear that legal hurdles and independent judiciary are the only impediments that hinder the Government of Kenya's more restrictive approach to Somali refugees as an initial step towards massive repatriation. The Government of Kenya justified its calls for Somali refugees to repatriate to 'safe areas' in Somalia in 2012, prior to the signing of the *Tripartite Agreement*, due to its security concerns as well as the unsustainable burden on Kenya.²⁹⁷

Politicians and, at times, the media have linked Somali refugees to the terrorist group Al Shabaab, thus portraying Somali refugees as a major security threat. 'Operation Usalama Watch'²⁹⁸, an anti-terrorist security operation that began in March 2014, resulted in the arrest and detention of Kenyan citizens of Somali ethnicity, the transfer of refugees from urban areas to refugee camps, and the deportation of Somalis to Somalia. Amnesty International concludes that it appears to be 'a pretext for the blanket targeting of the Somali community'²⁹⁹. Gerry Simpson, a senior refugee researcher at Human Rights Watch, at the time, protested that, 'Scapegoating and abusing Somalis for heinous attacks

²⁹⁷Integrated Regional Information Network (IRIN), Kenya-Somalia: Repatriating Dadaab refugees 'unrealistic'. *IRIN*, August 16, 2012. Retrieved from <http://www.irinnews.org/report/96116/kenya-somalia-repatriating-dadaab-refugees-unrealistic> [Accessed 23rd August 2017].

Heritage Institute for Policy Studies(HIPS),*Hasty repatriation: Kenya's attempt to send Somali refugees home*, Mogadishu, HIPS, 2013.Retrieved from www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf[Accessed 10th January, 2018.

²⁹⁸'Usalama Watch'was a multi-agency security operation targeting illegal immigrants especially of Somali origin in Nairobi after they were accused of orchestrating grenade attacks in Nairobi, North Eastern and Mombasa. Because Al Shabaab militants are perceived to be Somalis, refugees in Nairobi became targets and were unjustifiably victimized, harassed, arrested and threatened. Available at <https://www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis>[Accessed 23rd August 2017] <https://www.amnesty.org/en/latest/news/2014/05/kenya-somalis-scapegoated-counter-terror-crackdown/>[Accessed 23rd August 2017]

²⁹⁹ Amnesty International, *Somalis are scapegoats in Kenya's counter-terror crackdown*, 2014,p.14.AFR 52/003/2014. London, UK. Retrieved from <http://www.refworld.org/docid/538d78284.html>[Accessed 23rd August 2017]

by unknown people is not going to protect Kenyans, Somalis, or anyone else against more attacks'³⁰⁰.The Government of Kenya used national security concerns to justify these actions, probably because, as Burns puts it 'Kenya is in a position where it would rather assert its national security than honour humanitarianism because it is convinced it can no longer do both'.³⁰¹

While the Government of Kenya has often cited the insecurity caused by the terror group, Al Shabaab as the main reason behind her restrictive approach to Somali refugees, a review of a few years before the KDF incursion into Somalia and the subsequent reprisal attacks by Al Shabaab, shows that this move by the Government of Kenya may have been premeditated. This is because there have been restrictions on the registration of refugees since January 2007 when the government of Kenya closed the country's 682km border with Somalia, and the main transit centre in Liboi.³⁰²This was occasioned by clashes near the Kenyan border with Islamist militias being pursued by Ethiopian and Somali troops. Then Kenyan Foreign Affairs minister Raphael Tuju explained that the border was closed because, 'We are not able to ascertain whether these people are genuine refugees or fighters and therefore its best that they remain in Somalia'.³⁰³ In October 2011, Kenya's

³⁰⁰<https://www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis>[Accessed 23rd August 2017]

³⁰¹A. Burns, 'Feeling the pinch: Kenya, Al Shabaab and East Africa's refugee crisis', *Refugee*, vol. 27, no.1, 2010, p.6.

³⁰²Until the border closure, UNHCR screened and registered newly-arrived asylum-seekers at the refugee transit centre in Liboi, about 15 km from the Kenya/Somalia border. For more information, see Amnesty International, *From Life Without Peace to Peace Without Life: The Treatment of Somali Refugees and Asylum Seekers in Kenya*, 8 December 2010, AFR 32/015/2010, p. 2.

³⁰³'Kenyans close border with Somalis', BBC, 3rd January, 2007. Available at <http://news.bbc.co.uk/2/hi/6227083.stm>[Accessed 31st January, 2018]

Department of Refugee Affairs stopped all registration of refugees in Dadaab.³⁰⁴ The Department of Refugee Affairs' on 13 December 2012 ordered the suspension of all registration for asylum-seekers and refugees in urban centres.³⁰⁵ The decision was later challenged in court and the order was lifted.³⁰⁶

More recently, the Government of Kenya announced that Dadaab Refugee Camp would be closed within three months, after an attack by Al Shabaab at Garissa³⁰⁷ University in April 2015. According to the government, failure to do so would result in the government relocating refugees themselves. However, this was not the first time that Kenyan government officials have called for Dadaab Refugee Camp to be closed and for Somali refugees to repatriate. It did so in 1996, 2012, and 2016. Indeed, refugee issues have been politicized in Kenya and it is interesting to note that 1996, 2012 and 2016 are years preceding a general election in Kenya. Although these decisions to close the camps were not fully implemented, it led to the UNHCR closing two refugee camps including Utange Refugee Camp, located near the coastal city of Mombasa, in 1996.³⁰⁸ These 'threats' are

³⁰⁴MSF, Dadaab Briefing Paper: Back to Square One, 16 Feb 2013, <http://www.doctorswithoutborders.org/publications/article.cfm?id=5774> [accessed 12.12.15].

³⁰⁵Department of Refugee Affairs, Press Statement, 13.12.12, on file with Amnesty International

³⁰⁶Kenya High Court Judgement, Constitutional and Human Rights Division, Petition No 19 of 2013 consolidated with Petition No 115 of 2013, para 72.

³⁰⁷Kenya tells UN to close Dadaab camp after Garissa attack', BBC, 11th April, 2015. Available at <http://www.bbc.com/news/world-africa-32269944> [Accessed 1st February, 2018]

³⁰⁸P. Kirui, P. and J. Mwaruvie, 'The dilemma of hosting refugees: A focus on the insecurity in north-eastern Kenya', *International Journal of Business and Social Science*, vol.3 no.8, 2012, pp.161-171.

also evidently used as leverage or 'blackmail'³⁰⁹ by the Kenyan government to further negotiate with, and seek adequate refugee funding from the international community before containment and return of Somali refugees. Due to Kenya's strategic importance in the region, the Kenyan government has been subjected to additional pressures by the international community to fight terrorism.³¹⁰This however, does not justify the government's disregard for refugees' rights. The rhetoric of Somali refugees as a security threat is more the perception of Somali refugees as a threat rather than evidence based claims that refugees are the cause of insecurity.³¹¹In fact, Somali refugees in Kenya have little to do with the recent terrorist attacks and Somalis have become a scapegoat by politicians.³¹²This was observed in response to the Kenyan government's relocation directive in 2012, whereby Justice David Majanja³¹³ ruled, the first time it was challenged in court, that the state had not shown how refugees in urban areas were the primary

³⁰⁹A. Hajir, 'State accused of blackmail in refugee repatriation standoff', 15th May, 2016. Available at <https://www.nation.co.ke/counties/refugee-repatriation-standoff/1107872-3204312-format-xhtml-w4pf72z/index.html>[Accessed 1st February, 2018]

³¹⁰A. Burns, 'Feeling the pinch: Kenya, Al Shabaab and East Africa's refugee crisis', *Refugee*, vol. 27, no.1, 2010, pp.5-15

³¹¹J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.96

³¹² Heritage Institute for Policy Studies, *Hasty repatriation: Kenya's attempt to send Somali refugees home*. Mogadishu, HIPS, 2013, p.25, Retrieved from [//www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf)[Accessed 1st February, 2018]
Amnesty International, *Somalis are scapegoats in Kenya's counter-terror crackdown*. AFR 52/003/2014. London, UK, Retrieved from <http://www.refworld.org/docid/538d78284.html>[Accessed 1st February, 2018]

³¹³Justice David Amilcar Shikomera Majanja was appointed judge of the High Court of Kenya on August 23, 2011. He was educated at the Hill School, Eldoret and the Alliance High School. He studied law at the University of Nairobi where he graduated with a Bachelor of Laws in 1996. He also holds a Master of Laws in International Trade and Investment Law in Africa from the University of Pretoria. Upon admission to the bar in 1998, Justice Majanja worked for the firm of Mohammed and Muigai Advocates where he became a partner. Justice Majanja's first post was at the Constitutional and Human Rights Division of the High Court at the Milimani Law Courts in Nairobi where he is currently stationed. Available at <http://www.iojt-dc2013.org/Presenter-List/David-Majanja.aspx>[Accessed 1st February, 2018]

source of insecurity.³¹⁴ Furthermore, the issue of Somali refugees as a security threat in Kenya became a top issue during elections³¹⁵ and was used by politicians to benefit their own campaigns. Support for repatriation of Somali refugees is perceived to be popular among the Kenya electorate hence often cited as rhetoric for political mobilization.³¹⁶ According to a high-level panel during a meeting of the High Commissioners Global Initiative on Somali Refugees (GISR), the rhetoric linking refugees to terrorism is 'often unwarranted'.³¹⁷ While little evidence has been forthcoming to support their claim, the Government of Kenya has insisted that Dadaab refugee camps has been used as a hideout by terror elements hence the decision to close it down. This position has been maintained by senior government officials both in national and international forums. Addressing the United Nations General Assembly (UNGA) in New York for instance, Kenya's Deputy President³¹⁸ defended the Government of Kenya position to shutdown Dadaab refugee camp arguing that,

More recently, the Dadaab refugee complex has lost its humanitarian character and has been appropriated by terrorists and their agents, transforming it into a centre for radicalization, terrorist training, planning

³¹⁴S. Ndonga, 'Court overturns order to register refugees in camps', *Capital News*. July 26, 2013. Retrieved from <http://www.capitalfm.co.ke/news/2013/07/court-overturns-order-to-register-refugees-in-camps/> [Accessed 17th April 2017]

³¹⁵Amnesty International, 2014, *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 1st February, 2018]

³¹⁶ Heritage Institute for Policy Studies, *Hasty repatriation: Kenya's attempt to send Somali refugees home*. Mogadishu, HIPS, 2013, p.3, Retrieved from [//www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf) [Accessed 1st February, 2018] Refugee Consortium of Kenya, 'Refugee management in Kenya', *Forced Migration Review*, 16, p.17

³¹⁷ United Nations High Commissioner for Refugees, *The High Commissioners Global Initiative on Somali Refugees (GISR): Report of the high-level panel on Somali refugees*, Geneva, Switzerland, 2013. Retrieved from <http://www.unhcr.org/533923719.pdf> [Accessed 1st February, 2018]

³¹⁸ Hon. William Samoei Ruto

and launching of attacks. It is also a hub for illicit movements of small arms and light weapons.³¹⁹

However, this narrative by the Government of Kenya has not gone unchallenged by Somali refugees, and their supporters, who have maintained that no refugee has been arrested for terror related activities insisting that the Government of Kenya is using the refugees as scapegoats for a failed security system. One such refugee interviewee who protested the 'blanket' condemnation of refugees is 'Rashid'³²⁰. When asked about the relationship of refugees to terror related activities, he maintains that, 'Refugees have nothing to do with this thing (terrorism), because up to now, there is no a refugee caught on these issues of terror'.³²¹ Kenya's government on her part insists that the mastermind of the Garissa University attack, Mohamed Mohamud, alias Gamadhere, where 148 Students were killed, 'had networks in Dadaab refugee camp'.³²²

The perceived improvement in the security situation in parts of Somalia following the establishment of the new administration, and because of the presence of African Union Mission to Somalia (AMISOM) and Kenyan troops has heightened the calls for repatriation. Links between the presence of refugees and security threats in Kenya

³¹⁹Deputy President Press Service, 'Ruto faults global community over Kenya's refugee burden,' *Daily Nation*, 19th September 2016, Available at <https://www.nation.co.ke/news/Kenya-faults-rich-nations-over-refugee-crisis/1056-3387248-151hgng/index.html> [Accessed 1st February, 2018]

³²⁰A refugee, 'Rashid', not his real name, who spoke in confidence, responding on the role of refugees in terrorism, Interview on 10th August 2016 at Dadaab refugee camp

³²¹A refugee, 'Rashid', not his real name, who spoke in confidence, responding on the role of refugees in terrorism, Interview on 10th August 2016 at Dadaab refugee camp.

³²² Kenya Television Network, Dadaab documentary Series titled 'Painful Exodus' aired on 20 July 2016. Available at <https://www.standardmedia.co.ke/ktnnews/video/2000110864/-painful-exodus-business-in-dadaab-with-sharon-momanyi-part-3> [Accessed 1st February, 2018].

continue to be made, contributing to hardening attitudes towards Somalis in Kenya, and increasing pressure for repatriation.³²³

3.1.4 Refugees as a burden

Many host states perceive refugees as a burden that should be done away with as soon as possible. Nothing captures the fatigue of the refugees host states in Africa more than the joint AU-UNHCR statement made, as the African continent marked three decades since the establishment of the 1969 OAU Refugee Convention. In their eyes, the Convention is favourably counterpoised to a situation otherwise bemoaned ‘with profound concern’ because:

...thirty years after the adoption of the OAU Convention, the Continent is still afflicted by the plight of over four million refugees on the continent and several times that number of displaced people inside their countries caused by socio-economic and political factors including, in particular, conflicts, political violence and instability. This situation is unhealthy and unacceptable. Such a large number of refugees and internally displaced persons pose a heavy burden on OAU Member States already saddled with tremendous security, social and economic hardships. We are concerned with evident compassion fatigue within and outside the continent which is undermining the very principle which guided the founding fathers in framing the OAU Refugee Convention.³²⁴

³²³Amnesty International, ‘Kenya must not return Somali Refugees’, 1 October 2013. Available at <https://www.amnesty.org/en/latest/news/2013/10/kenya-somalia-refugees/> [Accessed 1st February, 2018].

³²⁴Joint Statement by Dr. Ahmed Salim Salim, Secretary-General of the OAU and Mrs. Sadako Ogata, United Nations High Commissioner for Refugees on the Occasion of the 30th Anniversary of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Addis Ababa and Geneva, 10 September 1999.

The positioning of refugees as a 'heavy burden' upon African states by the 1969 OAU Convention on its 30th anniversary came only four years after Tanzania closed its borders with Burundi and Rwanda. This took place on 31 December 1995, as refugees were entering its territory. Her Minister for Foreign Affairs³²⁵ later explaining, 'we are saying enough is enough. Let refugees go home and no more should come'³²⁶.

Even though the 1969 OAU Convention envisaged the concept of burden sharing in order to lighten the burden of host states, these host states in the Global South, including those in Africa, continues to perceive refugees as an economic burden, constraining already limited resources.³²⁷In establishing the 1969 Convention, burden-sharing is a central theme, with sub-article (4) of Article II stipulating that:

Where a member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU and such Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.³²⁸

³²⁵ Hon. Jakaya Kikwete. He was later to become the 4th President of Tanzania between 21stDecember 2005-5th November, 2015. Tanzania at the time had had strained relations with neighbouring Rwanda and Burundi whose citizens had fled to Tanzania following genocide in Rwanda(1994) and civil war in Burundi.

³²⁶See B. Rutinwa, 'The Tanzanian Government's Response to the Rwandan Emergency', *Journal of Refugee Studies*, vol. 9, No. 3, 1996,p. 291. Tanzania at the time had had strained relations with neighbouring Rwanda and Burundi whose citizens had fled to Tanzania following genocide in Rwanda(1994) and civil war in Burundi.

³²⁷A. Betts, and G. Loescher and J. Milner, *UNHCR : The politics and practice of refugee protection into the 21st century* (2nd ed.), New York, Routledge, 2012.

³²⁸OAU Convention Governing The Specific Aspects Of Refugee Problems In Africa Adopted On 10 September 1969 By The Assembly Of Heads Of State And Government. Cab/Leg/24.3. It Entered Into Force On 20 June 1974, Article 2(4).

Despite the provision for appeal in the spirit of burden-sharing envisaged in sub-article (4) of Article II, there has been no corresponding success in implementing it and turning burden-sharing into reality.³²⁹This is because the concept of 'burden sharing' is based on the goodwill of member states that may not necessarily help to lessen the burden of the refugee hosting state. This causes resentment towards refugees by the local population and as a result, refugees are often incorrectly blamed for economic hardships.³³⁰Furthermore, because the international community is not sharing the refugee burden equally and donor support for protracted refugee situations tends to decrease over time, host states are unwilling to find local solutions to these situations.³³¹Currently, 86% of refugees are hosted in developing countries³³². Thus, many host states feel as though they have an unfair burden³³³ and are often resentful of this. As a result, host states generally support repatriation in order to relieve the burden of hosting refugees.

Generally, refugees are perceived as a 'burden', economically, socially, politically, to the host country. Kenya is no exception to this perceived 'burden' as host state to thousands

³²⁹P. Noble, 'Refugees, Law and Development in Africa', 1982, *Michigan Yearbook of International Legal Studies*, 255, at p 270.

³³⁰T. Maluwa, 'The refugee problem and the quest for peace and security in southern Africa', *International Journal of Refugee Law*, vol.7, no.4, 1995, p.657.

³³¹United Nations High Commissioner for Refugees, *The state of the world's refugees: Human displacement in the new millennium*, New York, Oxford University Press, 2006, p.114.

³³²United Nations High Commissioner for Refugees, *Global trends report 2014*, Geneva, Switzerland, Division of Programme Support and Management, 2015,p.2

³³³J. Milner, 'Refugees and the regional dynamics of peace building', *Refugee Survey Quarterly*, vol.28, no.1, 2009, p.26

of refugees and has often cited it as a basis for its restrictive policies towards refugees.³³⁴ Prior to the large influxes of Somali refugees in the 1990s, refugees were generally not perceived as a major security threat³³⁵, and were mainly seen as contributing to the economy³³⁶. However, after the number of refugees significantly increased in the 1990s, the state began to see refugees as not its responsibility³³⁷, hostility towards refugees began to grow as they were viewed as constraining the country's resources as well as being considered less skilled and poorer than refugees in previous decades.³³⁸ Furthermore, because protracted refugee situations receive less attention from actors in the international refugee regime, donor support for Somali refugees in Kenya also decreased after the initial refugee emergency in the early 1990s³³⁹. International refugee law and partners tend to look at refugees as 'emergencies' and tend to reduce funding when situations become protracted. Protracted refugee situations are those unresolved beyond five years and reduced funding or support from donors seem to suggest that 'you have overstayed and you should go back home'. UNHCR admits that

³³⁴J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009.

³³⁵J. Crisp, 'A state of insecurity: The political economy of violence in Kenya's refugee camps', *African Affairs*, vol.99, no.397, 2000, pp. 601-632.

³³⁶C. Veney, *Forced migration in Eastern Africa: Democratization, structural adjustment, and refugees*. New York, Palgrave Macmillan, 2007.

³³⁷J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009.

³³⁸P. Kagwanja, 'Strengthening local relief capacity in Kenya: Challenges and prospects' In M.K Juma & A. Suhrke (Eds.), *Eroding local capacity: International humanitarian action in Africa*, Sweden, Nordic Africa Institute, 2002, p. 92

³³⁹J. Milner, *Refugees, the state and the politics of asylum in Africa*, London, Palgrave Macmillan, 2009, p.92
United Nations High Commissioner for Refugees, *The state of the world's refugees: Human displacement in the new millennium*, New York, Oxford University Press, 2006, p.114

shorted of funds affect protracted refugee situations as ‘all the attention goes to new cases’³⁴⁰. This seems to support the argument of by Harrell-Bond who asserts that:

The donor governments-which exercise the greatest power over refugee policy have become increasingly frustrated over the growing cost of supporting the budget of this organization and have been seeking a means of reducing their obligations. In their efforts to find ways to reduce costs, the promotion of repatriation has been seized upon as the appropriate solution.³⁴¹

Furthermore, Kenya’s internal crises have exasperated the view of refugees as a burden. The influxes of the 1990s coincided with conflict that took on an ethnic character within Kenya that resulted in almost half a million internally displaced Kenyans³⁴². Kenya’s economic situation at the time further compounded the situation. Moreover, post-election violence in 2007 led to inter-ethnic conflicts that left thousands of people displaced³⁴³, some of who are still so. The country also experienced a drought in September 2009, which left millions of Kenyans reliant on emergency food aid.³⁴⁴ Burns observes that ‘it is difficult for Kenyans to want to help their neighbours when they seem unable to help

³⁴⁰Reuters, ‘Somali refugees in Kenya caught between ration cuts and war at home, The Star, 19th December, 2017. Available

https://www.the-star.co.ke/news/2017/12/19/somali-refugees-in-kenya-caught-between-ration-cuts-and-war-at-home_c1687643 [Accessed 8th February 2018]

³⁴¹B. Harrell-Bond, ‘Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research’, *African Studies Review*, vol. 32, no.1, 1989, p. 44.

³⁴²Kenya experienced ethnic conflict during the first post-Cold war multiparty elections in 1992. Ethnic groups were aligned to particular political parties hence the violence largely blamed on the then ruling party, Kenya African National Unity (KANU). See also Kagwanja, P., ‘Strengthening local relief capacity in Kenya: Challenges and prospects’ In M.K Juma & A. Suhrke (Eds.), *Eroding local capacity: International humanitarian action in Africa*, Sweden, Nordic Africa Institute, 2002, p. 94

³⁴³Heritage Institute for Policy Studies, *Hasty repatriation: Kenya’s attempt to send Somali refugees home*. Mogadishu, HIPS, 2013, p.10, Retrieved from [//www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf) [Accessed 1st February, 2018]

³⁴⁴A. Burns, ‘Feeling the pinch: Kenya, Al Shabaab and East Africa’s refugee crisis’, *Refugee*, vol. 27, no.1, 2010, p.11

themselves.’³⁴⁵ Consequently, when Kenya is in a time of crisis, it contributes to a negative view of Somali refugees as a liability. This negative perception of refugees made Kenyan refugee policies ‘increasingly popular with the voting public’³⁴⁶, and consequently, the government of Kenya did not receive significant opposition from its citizens when implementing restrictive policies for refugees.

Even as the Government of Kenya declared her intentions to close down the Dadaab camps by November 2016, it kept lamenting the heavy burden it had to shoulder for 25 years while hosting thousands of Somali refugees. Speaking during the UNGA in New York on the 19th of September 2016, the Kenyan Deputy President William Ruto³⁴⁷ criticized the international community who had failed to support 10 developing countries, Kenya included, who host about 86% of world’s 22 million refugees. He observed that, ‘nothing can better demonstrate the failure of international burden-sharing than this reality’.³⁴⁸

Although the Government of Kenya has framed Somali refugees as a burden, the presence of refugees in Dadaab has brought benefits to the North Eastern Province,

³⁴⁵A. Burns, ‘Feeling the pinch: Kenya, Al Shabaab and East Africa’s refugee crisis’, *Refugee*, vol. 27, no.1, 2010,p.11

³⁴⁶G. Loescher, &J. Milner, ‘The long road home: Protracted refugee situations in Africa’, *Survival*, vol.47, no. 2, 2005, p.154

³⁴⁷Deputy president William Ruto is the First Deputy president of the Republic of Kenya, under the Constitution of Kenya 2010.He came to power in 2013 after successfully winning an election as a running mate to President Uhuru Kenya in a coalition arrangement between The National Alliance (TNA) and United Republican Party (URP).

³⁴⁸ Deputy President Press Service on 19th September 2016.The Deputy President was addressing the UNGA on matters of refugees while simultaneously explaining why the Government of Kenya had to close the Dadaab complex. Available at www.nation.co.ke/news/kenya-faults-rich-nations-over-refugee-crises/1056-3387248-151hgnq/index.html. [Accessed on 19th September 2016].

which has long been considered an impoverished region in Kenya. The presence of NGOs³⁴⁹ and the UNHCR has contributed to improved infrastructure and social services³⁵⁰. Thus, while hosting such a large population of refugees does put pressure on limited resources, it is also argued that the benefits to the region are greater than the costs, which include increased employment opportunities, commerce, social and health services, and new boreholes.³⁵¹ Other scholars have also argued that refugees can be of benefit to the host governments if they are allowed to work unhindered and become productive members of the society³⁵², and that Somali refugees in diaspora (those resettled in developed countries) can play a key role in providing aid towards refugees.³⁵³ Jacobsen³⁵⁴ has also observed that refugee resources may help develop areas of the country, increase the welfare of citizens, and extend the bureaucratic reach of the state.

The benefits of refugee assistance persist after refugees repatriate or are relocated, and resources such as buildings and transportation equipment are turned over to the local

³⁴⁹ There are many NGO's dealing with various essential services like provision and distribution of food, water, health, education, livelihoods among others. Among the notable NGO's include CARE-Kenya, Oxfam, Handicap International, Windle Trust Kenya among others. UN agencies like World Food Programme (WFP), United Nation's Children Emergency Fund (UNICEF), International Organization for Migration (IOM) among others are also active in the refugee camps.

³⁵⁰ Pérouse de Montclos, A. and P. Kagwanja, 'Refugee camps or cities? The socio-economic dynamics of the Dadaab and Kakuma Camps in Northern Kenya', *Journal of Refugee Studies*, vol.13, no.2, 2000, p.206

³⁵¹ United Nations High Commissioner for Refugees, EPAU, *Evaluation of the Dadaab firewood project, Kenya*. EPAU/2001/08. Geneva, Switzerland, Evaluation and Policy Analysis Unit, 2001, p.20.

³⁵² O. El Abed has argued that refugees are as productive as free citizens if granted the opportunity. She was writing on Palestinian refugees in Egypt who had become integrated that they were barely undistinguishable. See El-Abed, O., *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009.

³⁵³ C. Horst, 'A Monopoly on Assistance: International aid to Refugee Camps and the Neglected role of the Somali diaspora', *Africa Spectrum*, Hamburg: Institute of African Affairs at GIGA, vol.43, no. 1, 2008, pp.121-131.

³⁵⁴ K. Jacobsen, 'Can Refugees Benefit the State? Refugee Resources and African State building', *The Journal of Modern African Studies*, Cambridge, Cambridge University Press vol.40, no.4, 2002, p. 578

community. After the Mozambican repatriation from Malawi was completed in 1995, the UNHCR handed over refugee facilities including schools, clinics and vehicles worth \$35 million to the Malawi government, which also requested \$78 million from the UNHCR for reforestation to offset the deforestation resulting from the refugee presence.³⁵⁵The clean-up of camps and rehabilitation of the environment is usually funded by international agencies and implemented in cooperation with the local community. For example, in southern Guinea in late 2000, after Sierra Leonean refugees were relocated away from the border to escape rebel cross-border raids, the World Food Programme worked with locals to clean up some seventy-four former camps in the 'Parrot's Beak' area. A second phase of the project launched in November 2001 and funded by the US government, involved rehabilitating the environment in refugee hosting areas, and promoting environmentally sound food security.³⁵⁶Under the project, some 7700 refugees and people from nearby communities have received rice, ground nuts and maize seeds as well as hoes and machetes. Trees are being planted in former camps as well as existing ones. The project also entails helping local people near the camps to plant perennials such as coffee trees and oil palms. However, there is a big gap between available funding and the amounts needed to repair the damage.

³⁵⁵Although Malawi did not receive the money directly, UNHCR closed most of its 20 field offices throughout the country by the end of the year and handed over more than 1,500 development and reintegration projects worth \$80 million to the Mozambican government. Available at <http://www.refworld.org/docid/3ae6a8bc6a.html> [Accessed 1st February, 2018] See also World Refugee Survey 1996, p.57.

³⁵⁶IRIN, 'Guinea: IRIN Focus on efforts to rehabilitate the environment', 3rd June, 2002, Available at <https://reliefweb.int/report/guinea/guinea-irin-focus-efforts-rehabilitate-environment> [Accessed 1st February 2018]

It is evident that refugees are generally 'labeled' as a burden by several host states. However, as discussed above, these claims though weighty, may be exaggerated by host states. Indeed, refugees, just like ordinary citizens, can be useful to host states if given a chance to contribute to the wellbeing of the society.

3.2. The position of the Federal Government of Somalia on Repatriation

As in the case of Kenya, the FGS supports repatriation, not based on whether they perceive Somalia as safe but rather on the basis of how that process will help promote the agenda of the FGS. In this case, regardless of the conditions at home, it is envisaged that Somalia will support any efforts to bring the Somali refugees back home as this will help send a message that the government is legitimate, accepted and that people (including the refugees), state and non-state actors, stand in support. This legitimacy is important as it will help the Somali citizens support efforts by FGS to reconstruct the state. Legitimacy on the international front will also help in mobilizing resources required for the reconstruction of the state including that of resettling returnees (former refugees) in safety and dignity.

Unfortunately, majority of Somali refugees interviewed have no understanding on the working and functions of government. Many indeed are uneducated and could not even understand why government of Somalia would support repatriation yet conditions at home have not significantly improved. The support of repatriation of Somali refugees by

Somalia government is therefore an elitist decision and may not necessarily reflect the position of majority Somali refugees in Dadaab.

Many power holders in refugee countries of origin will tend to support repatriation regardless of the perceived or real safety and security threats in the home countries as a way of legitimizing their regime. The FGS is not an exception. By signing the TA with Kenya and the UNHCR on 10th November 2013, the FGS in essence was agreeing to receive Somali refugees back home.

There are many reasons that could have informed Somalia's support for repatriation despite the several concerns it has raised about when and how the exercise should have been carried out.

3.2.1 The need to inspire confidence and legitimacy at home

The FGS may have endorsed repatriation of Somali refugees as a way of seeking acceptance at home. This is especially crucial in the sense that the Al Shabaab militia has been struggling to topple the western backed government. To the FGS, the repatriation of Somali refugees from Kenya would imply that the FGS is accepted by the local Somalis to the extent that those who had fled are now coming back.

Returnees, therefore, will be going back on the basis of acknowledging the existing system of government as the defender of life and property. The fact that returnees will be

willing to accept the protection of the state in itself legitimizes the governing system within the state and the role of the transitional authorities as legitimate.

When Kenya announced her plan to close down the camp by end of 2016, the FGS came out in support of the programme although it raised an issue with the short time allowed, advocating for a more a staggered process to avoid a rush. The request was granted by the Government of Kenya as it agreed on 21st August 2016 to promote repatriation as the security situation improves in Somalia.³⁵⁷ The Government of Kenya had maintained that its military had ‘pacified’³⁵⁸ sections of Somalia hence it was conducive for repatriation, even as Somalia builds its own capacity to maintain law and order. It was also presumed that the presence of close to 20,000 military men under AMISOM has created a situation of relative peace and security in Somalia³⁵⁹.

Clanism has been a basis of conflict among the Somali community that is homogenous. Many militias since 1991 have been organized along clan lines. While it is true that not all of the diaspora have relinquished tribal or clan-based interests³⁶⁰, their return to Somalia may signal a new era as they try to practice what they have learned abroad. The Somali diaspora, including refugees from Kenya and other countries, are more experienced and exposed to other cultures and may tend to be more accommodative and liberal. Having

³⁵⁷E. Buchanan, Kenya softens its position on Dadaab refugee camp closures and refugee repatriation to Somalia. Availbale at www.ibtimes.co.uk/ngos-welcome-kenya-decision-keep-dadaab-refugee-camp-open-1577383 Accessed on 23/09/2016.

³⁵⁸S. Agnon, ‘Kenyan’s asked to support KDF’s mission in stabilizing Somalia, keeping country safe’, 23rd May, 2016, Available at <https://intelligencebriefs.com/kenyans-urged-to-support-kdfs-mission-in-stabilizing-somalia-keeping-country-safe/> [Accessed 1st February 2018]

³⁵⁹<http://www.unhcr.org/561627e39.pdf> [Accessed 1st February, 2018]

³⁶⁰Chatham House, British government consultation with the UK-based Somali diaspora. 8 February 2012.

lived in countries with functional governments and where the rule of law is observed, the Somali diaspora may contribute to the entrenchment of alternative organizational values in Somalia in the post war reconstruction process.

With the mandate of the transitional government ending in 2018, refugees will have a major role in the post war reconstruction process upon return. Having been in exile for many years, refugees will have a wealth of experience on functional government systems and will tend to value the peace that they have enjoyed in exile and may want that replicated at home. Some refugees too are highly skilled and educated and have the capacity to spearhead the reconstruction process.

3.2.2 Promote confidence levels and legitimacy among the Somali diaspora

The Somali diaspora has played a major role in the reconstruction of Somalia through remittances. Financial remittances, which constitute the highest portion of contributions so far, can be central to Somalia's reconstruction as they can enhance financial economic survival, community stabilization and economic activities in the absence of effective state institutions.³⁶¹ According to the UNDP report on remittances, the amount of money being sent to support community relief and development is significant; indeed, in some places it is the only assistance available.³⁶²

³⁶¹Hoehne et al, *Somali and Ethiopian diasporic engagement for peace in the Horn of Africa*.

³⁶²Hammond et al, *Cash and compassion: The role of Somali Diaspora in Relief, Development and Peace-building*

Considering such an immense contribution by the Somali diaspora, the return of refugees will enhance these remittances as they are partly the beneficiaries of such remittances. The confidence of the Somali diaspora will in turn encourage Somalis abroad to come home and rebuild their state. Studies indicate that a number of displaced people and their communities have apparently shown an interest in returning to their areas of origin: a study recently carried out in Kenya and Somalia found that 31% of refugees surveyed in the Dadaab refugee camps said that they would return to Somalia.³⁶³ Throughout 2013 to 2016 properties development in Somalia has been on the rise with no indications of slowing down soon. Somali diaspora have been returning to Somalia, particularly to Mogadishu, to reclaim land and seek business opportunities.³⁶⁴

3.2.3 Promote legitimacy and improve the confidence level in the international community

As a government that is struggling to gain control of a nation that is under the Al Shabaab militia, the FGS finds repatriation a good tool for a symbolic triumph against the militia. The returnees will therefore strengthen the reputation of the FGS internationally while simultaneously weakening the Al Shabaab militia and other rebels.

³⁶³Danish Refugee Council, Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return, 2013, p 35 / 36.

³⁶⁴Refugees International, 'When Push Comes to Shove: Displaced Somalis Under Threat., 07.11.13. Available at <https://reliefweb.int/report/somalia/when-push-comes-shove-displaced-somalis-under-threat> [Accessed 2nd February, 2018]

Though merely symbolic, the return of Somali refugees has a huge impact upon shaping the way in which the Somali government engages with other countries in the world. Perceptions of legitimacy and improved confidence, factors that are in part contributed to by the returnees, will help the FGS enter into development concessions and partnerships with other countries and promote more cooperation. The diplomatic influence of the FGS will substantially increase as its bargaining power increases.

Improved diplomatic influence of Somalia will symbolically help it regain its footing in the global world where multi-lateral agreements form the basis of improved trade as a result of reduced tariffs and non-tariff barriers. It will help create good perceptions of Somalia as a partner in development and prosperity as opposed to that of anarchy and statelessness.

Besides the benefits diplomatically, return of Somali refugees will help attract Foreign Direct Investment in Somalia. This is paramount to help in the reconstruction of the ruined economy, creating jobs and in stabilizing the currency.

3.2.4 Why home countries push for returns: An example of Rwanda

In the case of Rwanda, since 2002, the government of Rwanda (GoR) has exerted pressure on most of the governments hosting its nationals within the Great Lakes Region and in Africa as a whole to sign tripartite agreements to implement return.³⁶⁵This is because of a

³⁶⁵Refugee Law Project, International Refugee Rights Initiative and Social Science Research Council, 'A Dangerous Impasse: Rwandan Refugees in Uganda', *Citizenship and displacement in the Great Lakes working paper No.4*, June, 2010. International Refugee Rights Initiative. Available at: http://www.refugeerights.org/Publications/Papers/2010/10_08_30_Dangerous_Impasse.pdf [Accessed 15 February 2015].

desire to see refugees return and take part in rebuilding their country, as well as to ensure the protection of vital security and justice issues which flow from Rwanda's history of genocide. Rwandan strategies include push factors such as a ban on cultivation and a reduction of food rations, the forced repatriations of October 2007 and July 2010³⁶⁶ have been put in place to force³⁶⁷ Rwandan refugees to return. In 2011, UNHCR recommended the invocation of cessation clause scheduled for implementation on 30th June 2013 but was later postponed to 31st December 2017³⁶⁸, and its implementation³⁶⁹ is yet to be fully realized. Some of the returns so far conducted in line with tripartite agreements have been characterized by the use of force, threats, deceit and coercion³⁷⁰. Indeed, a report by International Refugee Rights Initiative and Social Science Research Council, titled 'A Dangerous Impasse:

³⁶⁶Cessation of refugee status is provided for in both the 1951 UN Convention and the 1969 OAU Convention – although the basis upon which a declaration of cessation can be made is described in broader terms in the latter Convention. (Article 1C of the 1951 UN Convention and article I(4) of the 1969 OAU Convention.)

Refugee Law Project, International Refugee Rights Initiative and Social Science Research Council, 'A Dangerous Impasse: Rwandan Refugees in Uganda', *Citizenship and displacement in the Great Lakes working paper No.4*, June, 2010. International Refugee Rights Initiative. Available at: http://www.refugeerights.org/Publications/Papers/2010/10_08_30_Dangerous_Impasse.pdf [Accessed 15 February 2015]. Harrell Bond, B. *Cessation Clause Uganda Style*, Keynote Speech Delivered at the Northwestern University Conference on Human Rights, January 23, Working Paper 11-001, January

³⁶⁷Involuntary return of refugees can also amount to a violation of the principle of the *jus cogens* principle of non-*refoulement* which prohibits states from –expelling or returning a refugee to the frontiers of territories where he or she would be exposed to persecution|. (Article 33, 1951 Refugee Convention.) Non-*refoulement* can occur as a result of *direct* action by a state or as a result of indirect measures, such as cuts in food rations, anti-refugee rhetoric, harassment by the local administration etc, which leave refugees with little choice but to repatriate.

³⁶⁸Email Communication with the Principal Protection Officer, Office of the Prime Minister on 20th October 2016.

³⁶⁹J. Kanamugire, 'African countries in a fix as Rwanda refugee status ends', *The East African*, 20th January, 2018. Available at <http://www.theeastafrican.co.ke/news/Rwanda-refugee-status-ends-/2558-4271610-w74qg5z/index.html> [Accessed 3rd February 2018]

³⁷⁰International Refugee Rights Initiative and Social Science Research Council, 'A Dangerous Impasse: Rwandan Refugees in Uganda', *Citizenship and displacement in the Great Lakes working paper No.4*, June, 2010. International Refugee Rights Initiative. Available at: http://www.refugeerights.org/Publications/Papers/2010/10_08_30_Dangerous_Impasse.pdf [Accessed 15 February 2017].

Rwandan Refugees in Uganda’, warn that ‘the current repatriation exercise is voluntary, in reality strong push factors are being created that refugees interpret as amounting to force, force that they see as emanating from both the government of Uganda’³⁷¹. Despite these pressures, a number of Rwandan refugees have stayed put. In addition, new asylum seekers and former repatriates (recyclers) continue to be registered as new arrivals, having made their way back to Uganda.³⁷²

3.3.0 Perceptions of the UNHCR and partner agencies on the safety of Somalia

3.3.1 Perceptions of the UNHCR

The response of the UNHCR, and the international community in general³⁷³, to Kenya’s push for repatriation of Somali refugees is that they do not perceive Somalia as safe for return. Reacting to Kenya’s position on May 6th 2016, that refugees must return, the UNHCR in a press release posted on their website on 9th May 2016, maintained that,

³⁷¹International Refugee Rights Initiative and Social Science Research Council, ‘A Dangerous Impasse: Rwandan Refugees in Uganda’, *Citizenship and displacement in the Great Lakes working paper No.4*, June, 2010, pp.19-20.

Available at: http://www.refugeerights.org/Publications/Papers/2010/10_08_30_Dangerous_Impasse.pdf [Accessed 2nd February 2018].

³⁷²A. Avenir, *Over One Million Rwandan Refugees Face Forced Repatriation from Uganda*, 16 May 2010, available at: <http://www.afriqueavenir.org/en/2010/05/16/over-one-million-rwandan-refugees-face-forced-repatriation-from-uganda/> [Accessed 21 March 2011].

³⁷³ The United Nations and the European Union expressed safety concerns in Somalia when the Government of Kenya insisted that Somali refugees must repatriate. The EU and the UN send high level delegations to meet President Uhuru Kenyatta in a bid to convince him to rescind his decision to close Dadaab refugee camps. The UN and EU represent several countries. See Kelley, K., ‘UN Security Council coming to Kenya to press Uhuru on refugees’, 18th May, 2016. Available at <https://www.nation.co.ke/news/Top-UN-diplomats-coming-to-Kenya-over-Dadaab/1056-3208854-up6txtz/index.html> [Accessed 3rd February, 2018]

It is with profound concern that the UNHCR takes note of this announcement. The safety of thousands of Somalis, South Sudanese and others has hinged on Kenya's generosity and willingness to be a leading beacon in the region for international protection. Tragically, the situations in Somali and South Sudan that cause people to flee are still unresolved today.³⁷⁴

Even though the UNHCR may not have agreed with the opinion of Kenya that Somalia is safe for return, it insisted that the process should be voluntary and with no specific timelines, perhaps to protect refugees from undue pressure to repatriate. After assurance from president Uhuru Kenyatta, United Nations High Commissioner for Refugees noted that, 'I was very happy to hear the president say emphatically that any solution-and repatriation is obviously the best solution-has to be conducted in a manner that is humane, dignified, safe and respects international law and principles'³⁷⁵.

According to the UNHCR, returns can only be considered voluntary if positive pull factors in the country of origin' are the 'overriding element in the refugees' decision to return rather than possible push-factors. Push factors include human rights abuses, and when refugees are 'subjected to pressures and restrictions and confined to closed camps.'³⁷⁶The vast majority of returnees to Somalia, it may be argued, may not meet the

³⁷⁴ UNHCR reacting to the Government of Kenya's announcement on 6th May 2016 that it was planning to close Dadaab refugee camps, hosting approximately 400,000 Somali refugees, and to repatriate Somali refugees forthwith. Available at www.unhcr.org/new/press/2016/5/57308e616/unhcr-appeals-kenya-decision-end-refugee-hosting.html [Accessed 10th July, 2016.]

³⁷⁵ UNHCR Filippo Grandi, speaking after meeting President Uhuru Kenyatta on 12th June, 2016. The Kenyan president assured the UNHCR that international laws and principles would be considered during the repatriation.

³⁷⁶UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.3.

criteria for voluntary return because when refugees feel they have no option but to return to their country of origin, this can amount to forced return.³⁷⁷

3.3.2 Perceptions of the UNSC as a UNHCR partner agency

In this section, I discuss the condition of physical security in Somalia as reported by various security actors including the UNSC and NGO's. These reports are important because repatriation works on the assumption that security conditions at home must have improved. While the researcher was unable to empirically collect data in Somalia because of logistical, security and financial constraints, it is reported that civilians in south and central Somalia persistently face insecurity and risk being targeted for grave human rights abuses. These include, for instance, indiscriminate and targeted violence, including rape and murder, as well as extortion.³⁷⁸ Although it is unclear who is responsible for attacks on civilians in all circumstances, it is widely believed that all parties to the conflict, including the SNAF³⁷⁹ and allied militia, as well as Al Shabaab, carry out such attacks. AMISOM, Ethiopian and Kenyan forces have also been responsible for attacks that have killed and injured civilians, including and as a result of violations of international humanitarian law (IHL).³⁸⁰

³⁷⁷J. Hathaway, *The Rights of Refugees under International Law*, 2005, p. 464.

³⁷⁸ Amnesty International (2014a:16). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

³⁷⁹ Somali National Armed Forces(SNAF).Somali national army was one of the strongest military in Africa before the 1991 coup of President Siad Barre.See<https://www.globalsecurity.org/military/world/somalia/personnel.htm> [Accessed 2 February, 2018]

³⁸⁰For more information see: Amnesty International, Returns to south and central Somalia: a violation of international law, 15 May 2013.

Although it is difficult to monitor the impact of the conflict on civilians, given limited access to many parts of south and central Somalia, and the ongoing absence of a system to track civilian casualties³⁸¹, it is generally agreed that violence of every kind is still rampant. The conflict is characterized by violations of international humanitarian law and human rights abuses by all sides in conflict, and civilians often fall victim. For example, the port town of Kismayu saw intense clan-based fighting in June 2013 over a longstanding dispute³⁸² as well as disagreements over the creation of a semi-autonomous state, Jubaland.³⁸³ One incident alone resulted in the reported deaths of at least 70 civilians with hundreds more wounded.³⁸⁴ At least 18 of those said to be killed were children.³⁸⁵ On 17 November 2013, at least 25 people were killed when heavy fighting broke out between government forces and local armed militia in Lower Shabelle region in an area

³⁸¹Security Council resolution 2036 (2012) commended the commitment of AMISOM to establish a Civilian Casualty, Tracking, Analysis and Response Cell (CCTARC) to track and investigate incidents of civilian harm, and provide compensation when required. The cell has yet to be established.

³⁸²The rift between the Marehan and Ogaden clans over control of Juba land and Kismayu. It demonstrates how these sub-clans struggle for power, yet both support the Darod for the larger control of the Somalia government. It is important to note that the Harti sub-clans including the Majerten control Puntland. [Interview of Somali refugees at Dadaab camps, 12th November 2016] See also International Training Programme for Conflict Management, 'Clan and State Politics', International Commentary Vol. IX no. 34, 2013, pp.15-16.

³⁸³Jubaland is semi-autonomous region where Kismayu is located. The control of Juba land is therefore necessary for one to control the strategic port city of Kismayu, the biggest port city in Somalia. Human Rights Watch, Somalia: Civilians Killed in Kismayo Clashes, 26 June 2013, <http://www.hrw.org/news/2013/06/25/somalia-civilians-killed-kismayo-clashes> [Accessed 18.12.15]. See also International Training Programme for Conflict Management, 'Clan and State Politics', International Commentary Vol. IX no. 34, 2013, p.16

³⁸⁴UN, Report of the Secretary General on Somalia, 3 September 2013, S/2013/521, para 17.

³⁸⁵UN, Report of the Secretary General on Somalia, 3 September 2013, S/2013/521, para 41.

known as Km 50.³⁸⁶ On 13 December 2013, further clan based fighting broke out across Lower Shabelle region killing at least 10 people and injuring dozens others.³⁸⁷

Reports indicate that schools and hospitals continue to be targeted, and while challenges in access make it difficult to determine the extent, the UN has identified 72 attacks on schools and 12 on hospitals in 2012, and verified seven attacks on schools between January and March 2013.³⁸⁸ On 15 January 2013, six children were killed when AMISOM accidentally fired at a *madrassa* (Islamic school) in Lego, Lower Shabelle.³⁸⁹ The worst single bomb in Somalia's history hit a Somali hotel on 14th October 2017, killing at least hundreds³⁹⁰ people, raising questions on future stability prospects for a country that was seemingly stabilizing.

Unlawful killings continue to take place with frequency. Reportedly, killings by the SNAF are often as a result of weak command control and discipline, while Al Shabaab continue to cause civilian harm through an indiscriminate use of weapons, as well as

³⁸⁶See <http://allafrica.com/stories/201311170308.html> for further details [accessed 18 December 2015].

³⁸⁷Reports to Amnesty International, 16 Dec 2015, on file.

³⁸⁸UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, Annex 8.1, para 14 and 17.

³⁸⁹UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013. AMISOM may have mistaken the children for Al Shabaab.

³⁹⁰ 'Somalia: At least 230 dead in Mogadishu blast', BBC, 16th October, 2017. Available at <http://www.bbc.com/news/world-africa-41621660> [Accessed 3rd February 2018]. See also Nor, O., and Gray, J., 'Mogadishu bombings kill 'unprecedented number of civilians'', CNN News, 16th October, 2017. Available at <https://edition.cnn.com/2017/10/15/africa/somalia-mogadishu-blast/index.html> [Accessed 3rd February 2018]

targeted killings.³⁹¹Unlawful attacks on civilians are particularly common on main transport routes. Men, sometimes wearing government uniforms, have reportedly fired on transport vehicles, often killing or injuring civilian passengers.³⁹²

Despite the presence of AMISOM in Somalia, Al Shabaab, although weakened, continue to reign terror on civilians and even make daring raids³⁹³on foreign militaries under AMISOM, such as the Kenya Defence Forces. Security in Mogadishu and surrounding cities has been improving considerably since Al Shabaab fighters were dislodged from these regions by coalition of AMISOM and SNAF forces. Somalia's capital city has not seen running battles for months. Business vibrancy is slowly but steadily returning.³⁹⁴The prevailing sense of optimism has prompted thousands of refugees in Kenya and diaspora Somalis elsewhere to return home. Still, normalcy is an elusive prospect. Suicide bombings, targeted assassinations and sporadic clashes between Al Shabaab fighters and Somali government security forces remain common, with the worst single suicide

³⁹¹UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013, para 133.

³⁹²Amnesty International., *No place like home: Returns and relocations of Somalia's displaced*,p.17,AFR 52/001/2014,London, Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 3rd February 2017]

³⁹³ For instance, the Al Shabaab ambushed a Kenyan military base in El-Adde in Somalia reportedly killing several KDF soldiers on the morning of 15 January2016.This bloody attack was carried as headlines in Kenya's popular newspapers on the 16th January 2016.The Standard, for instance, carried the headline 'Bloody battle for KDF troops'. This attack on the KDF camp in Somalia could be a justification that Somalia is still too dangerous for any meaningful repatriation.

³⁹⁴Ali, L., "Mogadishu is like Manhattan': Somalis return home to accelerate progress', Guardian - January2013 <http://www.guardian.co.uk/global-development/2013/jan/11/mogadishu-manhattan-somalis-returnprogress>

bombing in Somalia claiming hundreds on 14thOctober, 2017³⁹⁵. Despite significant losses, Al Shabaab fighters still control a large swath of land in southern Somalia.³⁹⁶ That makes most refugees nervous and uncertain about returning to Somalia. According to a study report by Heritage Institute for Policy Studies titled *Hasty Return*, only 6% of those interviewed in Kenya said they are prepared to return home immediately. 63% said they considered Somalia their home and are willing to return if conditions continue to improve, and more regions are recovered from Al Shabaab fighters. 20% said they were not willing to return to Somalia because the conditions under which they fled remain.³⁹⁷This implies that by the time the Tripartite Agreement for return was signed in November 10th2013, majority refugees were considering returning to Somalia in the future if physical safety conditions improved and Al Shabaab was defeated.

In sum, the UN and international organizations operating in Somalia have recognized that conditions are not yet conducive for the return of Somali refugees.³⁹⁸ Indeed several reports³⁹⁹by UN and NGO's have warned of the security situation in Somalia at the

³⁹⁵O. Nor, and J. Gray, 'Mogadishu bombings kill 'unprecedented number of civilians', CNN News, 16th October, 2017. Available at <https://edition.cnn.com/2017/10/15/africa/somalia-mogadishu-blast/index.html>[Accessed 3rd February 2018]

³⁹⁶As early February, Al Shabaab controls much of Middle Shabelle, parts of Lower Shabelle, almost all of Galgaduud, Bakool, Gedo and Middle Juba regions.

³⁹⁷Heritage Institute for Policy Studies, *Hasty repatriation: Kenya's attempt to send Somali refugees home*. Mogadishu, HIPS, 2013, p.19 Retrieved from [//www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf)

³⁹⁸UNOCHA, Somalia Humanitarian Bulletin, September 2013.

³⁹⁹UN Security Council (UNSC), *Report of the Secretary-General on Somalia*, 8 January 2016, S/2016/27,

present time, expressing concern about the current conditions in Somalia and noting, among others, the following:

(i) There remains a large presence of local and national militias contributing to local insecurity;

(ii) There is not sufficient protection for returnees;

(iii) There has been a surge of human rights violations including gender-based sexual violence;

(iv) A large influx of refugees being returned will likely destabilize the situation in Somalia and undermine the fragile authority of the government;

(v) The new government does not have the capacity to provide assistance to returning refugees;

(vi) The situation in Somalia remains fluid – there are many unknowns such as whether AMISOM’s mandate will be renewed and if so, for how long;

(vii) While the situation has stabilized in Mogadishu, it remains extremely difficult for NGOs and international agencies to operate in southern Somalia;

<http://www.refworld.org/docid/5698a0b64.html>, para. 12. According to the Tony Blair Faith Foundation, in February 2016 ‘Somalia was once again among the deadliest countries for civilians, with 107 killed’, Tony Blair Faith Foundation, *Global Extremism in February 2016*,

<http://tonyblairfaithfoundation.org/sites/default/files/Extremism%20Monitor%202002.16.pdf>, p. 3. In January 2016 Somalia ‘saw more incidents related to violent extremism than any other country’. Tony Blair Faith Foundation, *Global Extremism in January 2016*,

<http://tonyblairfaithfoundation.org/religion-geopolitics/reports-analysis/report/global-extremism-january-2016>, pp. 7-8. ‘The volatile security situation has deteriorated since the beginning of the year [2015], making the delivery of assistance and protection services to people in need even more dangerous’, OCHA, *2016 Somalia Humanitarian Needs Overview*, 25 November 2016,

<https://www.humanitarianresponse.info/en/operations/somalia/document/2016-somalia-humanitarian-needs-overview> p. 11. In January 2016. [Accessed 4th February 2018]

(viii)Corruption remains rampant⁴⁰⁰.

3.3.3 Sexual violence

Several international agencies have reported that rape and other forms of sexual violence against women and girls is endemic in Somalia,⁴⁰¹ particularly in settlements and camps for displaced people.⁴⁰²Most perpetrators are reportedly armed, and many allegedly wear the uniforms of government security forces.⁴⁰³According to the UN, 800 cases of rape and other forms of sexual violence were reported in Mogadishu and surrounding areas between January and July 2013.⁴⁰⁴As a result of the type of genital mutilation practiced by many Somalis⁴⁰⁵, which involves sewing up the genitalia, rape victims may literally be cut open by their assailants, using daggers or bayonets. The degree of physical pain and psychological trauma inflicted by such experiences requires no elaboration.⁴⁰⁶Curiously, the Dadaab camps in northeastern Kenya, where the refugees have gone to seek refuge have also reported sexual violence within and around the camps. While such forms of

⁴⁰⁰Heritage Institute for Policy Studies, *Hasty repatriation: Kenya's attempt to send Somali refugees home*. Mogadishu, HIPS, 2013, p.24. Retrieved from [//www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2013/03/HIPS_Hasty_Repatriation_ENGLISH.pdf)

⁴⁰¹UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013, para 42.

⁴⁰²For more information see: Amnesty International, Rape and Sexual Violence in Somalia: an ongoing epidemic, 30 August 2013.

⁴⁰³UNSC, Report of the Secretary General on Somalia, 3 September 2013, para 42; Amnesty International, Rape and Sexual Violence in Somalia: an ongoing epidemic, 30 August 2013.

⁴⁰⁴UNOCHA, Somalia Humanitarian Bulletin, July 2013.

⁴⁰⁵Most Somali women, more than 95% have undergone Female Genital Mutilation. The 2017 updates indicates Somalia and Guinea as having the highest prevalence in Africa with Somalia at about 98% prevalence. See <http://www.prb.org/pdf17/FGMC%20Poster%202017.pdf> [Accessed 4th February 2018], https://www.28toomany.org/static/media/uploads/Country%20Research%20and%20Resources/Somalia/somalia_printer_friendly_page_a4.pdf [Accessed 4th February 2018]

⁴⁰⁶ Somalis undergo FGM that involves the sewing of the genitalia. Rape in such a case means the victim suffers immense pain and psychological torture of unimaginable magnitude. See also Jeff Crisp titled *A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps*, 2000, p.606

insecurity have remained largely hidden from external view, the problem of sexual violence (especially rape) in the three camps around Dadaab has attracted a substantial amount of international attention.⁴⁰⁷

Protesting why she will not return to Somalia, Interviewee Farhia, a young woman aged 20, whose sentiments represents many, laments that 'There are lots of war casualties in Somalia. Other safety issues are impunity and forced marriage'⁴⁰⁸. Perhaps aware of what awaits her in Somalia, she is concerned that she may be given out in marriage against her wish-a culture acceptable among the Somalis in Somalia. Though Somalis in Kenya may practice the same, they will do as covertly as it is illegal.

3.4.0 Individual perceptions of Somali refugees on the safety in Somalia

The concerns of refugees about the safety of Somalia as a precondition for repatriation is best understood by looking at the rationale behind their decision either to return or not. This is because those unwilling to return generally regard Somalia as unsafe. Those willing to return if conditions improve are of the view that Somalia, though not safe now, may soon improve allowing for the conditions that will allow⁴⁰⁹ them to return. Although not willing to return at the time, Mohamed indicated he does not mind returning home in future if conditions at home allow. On the other hand, those willing to return consider

⁴⁰⁷See Human Rights Watch, *Seeking Refuge, Finding Terror: The widespread rape of Somali women refugees in north-eastern Kenya* (New York, 1993); Africa Rights, *The Nightmare Continues. Abuses against Somali refugees in Kenya* (London, 1993); Binaifer Nowrojee, *Target for Retribution* (Human Rights Watch, New York, 1997).

⁴⁰⁸Interview with Farhia, Dadaab, 24/8/2016.

⁴⁰⁹ Interview with Mohamed on 24th August 2016.

Somalia safe to return or are simply tired of being refugees and would return regardless of the conditions at home⁴¹⁰. Idris, my interviewee, complained that the conditions in Dadaab, and pressure by Government of Kenya to return leaves them with no option but to return regardless of conditions at home.

While the study deliberately avoided reducing the refugee repatriation debate into numerical data, it may just be important to note that of the 15 refugees interviewed, only 2 perceived Somalia as safe. A detailed analysis of their perceptions will be discussed in chapter 5 while exploring the idea of inclusivity. These perceptions of refugees on the safety of Somalia are discussed in further detail below based upon the fieldwork findings.

3.4.1 Refugees unwilling to return: Somalia too insecure for habitation

The individual perceptions of refugees concerning the safety of Somalia as a pre-condition for repatriation is very important if repatriation is to be actualized. It, however, appears that not all refugees are enthusiastic about returning to Somalia. According to one such refugee:

The only person who wants to go back to Somalia is doing so to go from the worst to the worst. If your motherland is that way, and here in Kenya we're chased all the time, what can we do? I left Dadaab because of insecurity. Now in Nairobi there are security problems here too. It is too bad to be a Somali. But my dream is nothing about Somalia.⁴¹¹

⁴¹⁰ Interview with Idris on 24th August 2016

⁴¹¹ Ayaan, a refugee, 31, from Gedo region and who had recently fled Dadaab for Nairobi in search for better opportunities. She dismissed any future plans to relocate to Somalia.

The sentiments expressed by Ayaan above are echoed by another refugee who not only views Somalia as too risky in terms of security, but also considers Kenya as equally insecure for refugees. According to him:

The problem is there is no security in Somalia. Mogadishu is not safe, even the government can't protect themselves. So the question is, can the Somali government protect the Somali people? No, it can't. Even in Kenya we are not protected. So how can the Somali government protect us?⁴¹²

Because of the proximity to Kenya-Somali porous border, Dadaab refugee camps also experience insecurity. This leaves Somali refugees caught in a cycle where they are not safe in either situation.

Explaining his opinion, Omar wondered how a government that cannot withstand the militia can protect its citizens. Salah Omar's view is similar to that of Salah, a refugee in Dagahaley camp in Dadaab. Asked whether he thought Somalia was now safe for return, he simply wondered how one can return to Somalia where 'Central government is weak and corrupt and there is no peace and stability'⁴¹³. This perception of Salah Omar is corroborated by that of Ismael who is not considering repatriation because 'Somalia government is weak and most parts of Somalia are under militia control'⁴¹⁴ Refugees therefore do not view Somalia as safe for repatriation.

⁴¹² Omar, 43, a refugee in Dadaab, argues that there is no way the Government of Somalia that is struggling with instability can guarantee the civilians much needed security.

⁴¹³ Interview with Salah Omar, a refugee, at Dagahaley camp in Dadaab, 24/04/2016

⁴¹⁴ Interview with Ismael, a refugee, at Dagahaley camp, 24/8/2016.

Refugees are in a dire situation in Kenya and see the financial assistance for repatriation as a necessary form of survival or use the opportunity of assistance for repatriation to test the conditions in Somalia because the information of the happenings there are scanty. Asked on what she thought about the organized repatriation, Josephine, a young Sudanese refugee said, 'for me, I think many Somali refugees are just opting to temporarily return to Somalia in order to benefit from the repatriation financial and material assistance from UNHCR only to return after a few weeks or months citing insecurity'.⁴¹⁵ She claims she knows a number of refugees who took the offer only to return. Josephine's view, though from a Sudanese refugee, illustrates the general perceptions and dynamics of refugees to the process of repatriation. It appears some refugees may have taken the offer of a repatriation package as a way of piloting the possibility of relocating to Somalia.

Although a majority of refugees cited insecurity in Somalia as the reason they are unwilling to return, a considerable number admit that there is very little reliable information from Somalia to that effect. It appears this lack of information has made many Somali refugees assume that this is as a result of insecurity in Somalia. Asked about her thoughts about the security in Somalia, a refugee, Ali, believed that there is 'More violence experienced in Somalia, no clear information about the situation'⁴¹⁶. Ali's perception seems to have been informed by the little or lack of information about the

⁴¹⁵ Josephine was the only non-Somali refugee respondent. As a Sudanese refugee, her perception of the repatriation process may be termed as 'objective' as it is from a non-partisan party.

⁴¹⁶ Interview with Ali, a refugee, at Dagahaley refugee camp in Dadaab on 24/8/2016

actual security situation in Somalia. The lack of reliable information about Somalia is confirmed by Abdi who lamented that 'I cannot repatriate because no one knows what actually happens at home security wise'.⁴¹⁷ It is therefore evident that lack of or scanty information about the situation in Somalia is hindering the repatriation process as refugees cannot make any informed decision regarding return.

3.4.2 Willing to return if conditions improve

While some refugees may choose to take up the UNHCR offer for repatriation and risk, at least for some time, others like 50-year old Mihiya who has been a refugee for 25 years, cannot make such an attempt and simply say, 'I want to go back. It is my motherland but, because of the current security situation, I cannot go back'.⁴¹⁸ UN officials say some of the main complaints by those who had returned were about lack of schooling or adequate shelter, after leaving a camp where basic needs were met.⁴¹⁹ This implies that refugees perceive socio-economic conditions at home as equally important as the security situation. As stated by Hogan⁴²⁰, an essential part of any refugee information system is the returnees who report back to the refugees in exile about the conditions at home. The information returned by these repatriates is often considered by the refugees to be the most reliable of all possible information sources because they have been refugees themselves. Returnees understand what kind of information is most valued by those still

⁴¹⁷ Interview with Abdi, a refugee, at Dagahaley refugee camp in Dadaab on 24/8/2016

⁴¹⁸ Reuters, *Daily Nation*, online accessed at mobile.nation.co.ke/news/UN-repatriate-Somalis-Dadaab/-/1950946/3043828/-/format/xhtml/-/sfq99qz/-/index.html on 22 January, 2016.

⁴¹⁹ E. Blair, Reuters, 'UN Agency eyes 50,000 Somalis returning from Kenyan camp' *Reuters* Accessed at www.reuters.com/article/idINKCN0UZ2K6?irpc=932 [Accessed 22 January 2016].

⁴²⁰ Hogan, M., 'Quest for Living Space: Repatriation Efforts among Assisted Displacees in South-Central Sudan' in Cuny, Barry Stein and Pat Reed(eds.) *Repatriation during Conflict in Africa and Asia*, Dallas, Texas, Center for the Study of Societies in Crisis, 1992, pp. 381-427.

in exile.⁴²¹It appears refugees have a lack of trust in some of the institutions (government and non-state agencies) relying moreover on fellow refugees who have experienced the same as themselves. Refugees tend to rely, on their networks⁴²² as the most important feature for information flow and support systems.

3.4.3 Refugee involuntary returns

Some refugees, whom expressed frustrations about life as a refugee in Kenya, also consider returning to Somalia even if conditions at home have not improved. A critical analysis of their perceptions indicate that it is more as a result of push factors in Kenya and not necessarily because of pull factors in Somalia. One such refugee, Abdullahi, thinks he will take up repatriation after all, 'food security in the camps is inadequate. Insecurity in camp is deteriorating too'.⁴²³Abdullahi was responding to a question on whether he would take up repatriation. He seemed to prefer Somalia over Kenya because he termed the current life in the camp as unbearable. It is thus evident that the conditions at the camps are very difficult and refugees do not have enough to eat. This, obviously, also puts into question the quality, as in nutrition, of the food rations at Dadaab refugee camps. The food is limited and the diet not varied.

The argument by Abdullahi is not unusual. In the report of 14th September 2016, HRW condemned the Government of Kenya and the UNHCR accusing them of coercing Somali

⁴²¹M. Hogan, 'Quest for Living Space: Repatriation Efforts among Assisted Displacees in South-Central Sudan' in Cuny, Barry Stein and Pat Reed(eds.) *Repatriation during Conflict in Africa and Asia*, Dallas, Texas, Center for the Study of Societies in Crisis, 1992,p.423

⁴²²J. Bayart, *The State in Africa: The Politics of the Belly*, Second Edition , Cambridge, Polity 2009.

⁴²³ A refugee in Dadaab responding to a question on whether he would take up repatriation. He seemed to prefer Somalia over Kenya because he termed the current life in the camp as unbearable. August 02, 2016.

refugees to return to Somalia. Another refugee, Sahra, a 42-year-old woman from Hiraan region who has signed up for return to Somalia is quoted in the HRW report as saying, 'It's not the right time for us to go back. But every day the Kenyan government is telling us that we have to go, and UNHCR is not giving us any different information...I said I will go back as we have no other option.'⁴²⁴ Bill Frelick, refugee rights director at HRW, condemned the Government of Kenya for what he says is involuntary return of Somali refugees. He lamented that,

'The Kenyan authorities are not giving Somali refugees a real choice between staying and leaving, and the UN refugee agency isn't giving people accurate information about security conditions in Somalia...there is no way these returns can be considered voluntary'⁴²⁵.

The UNHCR, Government of Kenya and Somalia would later, through a joint communiqué, dismiss the report as 'misinformation' and 'negative publicity'⁴²⁶ of the repatriation process. It appears the three Tripartite Parties were unwilling to admit that they have been overseeing a process that is 'involuntary', contrary to the provisions of the international refugee laws.

⁴²⁴ HRW Report released on 14th September 2016. The UNHCR, Government of Kenya and Somalia would later dismiss the report as 'misinformation' and 'negative publicity' of the repatriation process. Report available at:

www.hrw.org/news/2016/09/14kenya-involuntary-refugee-returns-somalia

⁴²⁵ HRW Report released on 14th September 2016. The UNHCR, Government of Kenya and Somalia would later dismiss the report as 'misinformation' and 'negative publicity' of the repatriation process. Report available at:

www.hrw.org/news/2016/09/14kenya-involuntary-refugee-returns-somalia

⁴²⁶ The UNHCR, Government of Kenya and Somalia denying claims by HRW report of 14th September 2016 that faulted the repatriation process as involuntary and one that does not meet international standards as provided for by the refugee law. Available at www.nation.co.ke/news/UN-responds-to-claims-of-forceful-repatriation-of-refugees/1056-3385964-8o7rjj/index.html Accessed on 18th September 2016.

3.4.4 Willing to return because conditions have improved

Despite the fear that Somalia is still too insecure for habitation, there are refugees who feel that Somalia is safe and are willing to return. Hodan, a refugee in Dadaab who signed up for repatriation is eager to go back home. She says, 'I am very excited about going home. I have decided to go and nobody forced me'⁴²⁷. Whereas Hodan is not sure of what exactly awaits her in Somalia, she remains optimistic that peace will prevail and she will have a part in contributing to the reconstruction of her homeland.

Those who were willing to return because they believed Somalia was now safe had other different concerns. Among them is the challenge of restoring their rights to, for example, land ownership. In theory returning refugees must have access to land or a means of sustaining a livelihood. Returning refugees should be treated with respect and fully accepted by their national authorities, including through the full restoration of their rights.⁴²⁸ In practice, however, reports indicate that the return of refugees, has resulted in increased pressure over land access and disputes over land ownership rights. Perhaps the greatest challenge that the returnees will have to contend with is recognition of their right to land and access to that right.

It is hoped that the returnees will have access to all rights due to other citizens in order to make the repatriation exercise sustainable. The opportunities in the post conflict Somalia

⁴²⁷NTV Television News, 5th May 2016

⁴²⁸ UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.4.

are great and with them come an equal challenge on how to ensure this without degenerating into another resource related conflict.

3.4.5 Conclusion

In this his chapter I explored different perceptions of the Tripartite parties and refugees about the security situation in Somalia as a prerequisite for return. The Government of Kenya has insisted that Somalia is relatively 'safe' for return of thousands of Somali refugees. The Government of Kenya has pressurized refugees to return, sometimes threatening to close down the refugees and forcefully repatriate them. Albeit without evidence; it has blamed refugees for increased insecurity and terrorist attacks in Kenya. Kenya has claimed that some terror elements hide within the refugee camps as they plan to launch attacks on Kenya - an assertion that too lack substance as evidence shows that many refugees accused of these allegations have often been acquitted by the courts. This seems to be more of a 'smear campaign' against refugees to serve Kenyan interests.

The Somali Federal Government is also interested in the positive legitimacy credit it is likely to receive locally and internationally by welcoming refugees from exile. It is however grappling with weak governance structures in the face of a resurgent Al Shabaab militia that seeks to topple it. Returnees also complicate local politics and threaten the relative calm in Somalia as returnees and locals fight over rights to land and other resources.

The UNHCR on the other hand seeks to protect refugee welfare without antagonizing the host state and state of origin. The fact that refugees are a political issue leaves the UNHCR with very limited options and is compelled to work within what is allowed by the host state. Reduced funding to UNHCR puts UNHCR in a fix as states adopt a more restrictive approach to hosting refugees.

Refugees, perhaps aware of this predicament, are forced to rely on their networks and judgment to either return or remain in the camps amidst dwindling UNHCR support to stay in the camps. Although the majority of Somali refugees in Dadaab cite insecurity in Somalia as a reason not to return, they admit they have limited options. The situation is dire. Because refugees cannot directly make decisions regarding return, a preserve of the elites, they are forced to creatively bear the consequences of such decisions. The fact that the Government of Kenya, SFG and UNHCR arrived at and signed the Tripartite Agreement despite refugee perceptions of the in(security) in Somalia implies that the elites utilized these systems for many different and competing interests. This is in line with elite theory where a few privileged individuals or organizations make decisions on behalf of the masses. Aware of these embedded interests, refugees rely on their own networks to verify information about Somalia and make independent decisions regarding return.

In the next chapter, chapter four, I explore the responsibilities of the Tripartite Agreement before, during and after the repatriation process.

CHAPTER FOUR

THE ROLES AND RESPONSIBILITIES OF KENYA, SOMALIA AND THE UNHCR IN REPATRIATION

4.0 Introduction

This chapter explores and examines the roles and responsibilities of the Kenya-Somalia UNHCR (tripartite parties) in ensuring successful voluntary repatriation of Somali refugees and in promoting stability and security in the region. The Tripartite Agreement signed between Kenya, Somalia and the UNHCR on 10th November 2013 envisaged certain responsibilities among the tripartite parties. This was in order to achieve the objective of the agreement to provide 'a legal framework for the safe and dignified voluntary repatriation of Somali refugees from the Republic of Kenya and their reintegration in the Federal Republic of Somalia.'⁴²⁹ Since Somali refugees came to Kenya in 1991, the government of Kenya has rejected possibility of integrating Somali refugees. This is because Somalis are viewed as security threat in Kenya as will be discussed further in chapter 3.

Implicit in the discourse, promoting voluntary repatriation in the 1990's, is the notion that the return to the country of origin is the most "natural" outcome of exile and, as such, it is also the least problematic solution.⁴³⁰ Increasingly established as the most viable solution

⁴²⁹ This is according to article 2 of the Tripartite Agreement signed between The Government of The Republic of Kenya, the Government of The Federal Republic of Somalia and The United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees Living in Kenya.

⁴³⁰ M. Eastmond, *Reconstruction and the Politics of Homecoming: Repatriation of Refugees in Cambodia*, Working Paper no. 1, Department of Social Anthropology, Göteborg University, April 2002, p.2

for refugees, repatriation has come to be designated by the international community of states and the UNHCR as the ideal solution to the global refugee problem⁴³¹ and especially when dealing with large numbers of refugees.

This, however, does not imply that repatriation is workable or straight forward as the most preferred solution to the refugee problem. In fact, the few in-depth or ethnographic studies focusing on repatriation (most of them from African contexts) suggest that far from being a simple solution, return is often a complex process and the outcome is far from given.⁴³² The problem is both political and perceptual. It is political in the sense that repatriation seem to be less problematic politically as refugees return to their original place. The perception of return presupposes a less politically complex route for many actors hence the view that is the most appropriate or preferred. In essence, however, repatriation is dynamic and complex and not simplistic as it may sound. Indeed, Bradley has noted that it is important to further research on repatriation as it has not received a

⁴³¹V. Ullom, 'Voluntary Repatriation of Refugees and Customary International Law', *Denver Journal of International Law and Policy*, Spring, 2001. Chimni, B., 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73. Omata, N., 'Struggling to Find Durable Solutions: Liberian Refugees in Ghana', *New Issues in Refugee Research*, Geneva, UNHCR Policy Development and Evaluation Service, Research Paper no.234, 2012. United Nations High Commissioner for Refugees. (1996). *Handbook on voluntary repatriation: International protection*. Geneva, Switzerland, UNHCR. Takahashi, S., 'The UNHCR handbook on voluntary repatriation: The emphasis of return over protection', *International Journal of Refugee Law*, vol.9, no.4, 1997, pp.593-612.

⁴³²T. Allen, and H. Morsink, *When refugees go home*, Geneva, UNRISD, 1994. Allen, T. and D. Turton, 'Introduction'. In Allen, T. (ed.) *In Search of Cool Ground. War, Flight & Homecoming in Northeast Africa*, Geneva, UNRISD, 1996. Black, R. and K. Koser, *The End of the Refugee Cycle?* Oxford, Berghahn, 1999.

adequate attention from researchers. This is despite a significant shift⁴³³ of policy on refugees towards repatriation as the preferred solution. This preference of repatriation comes with a series of implications for refugees who may not be able to challenge this move.

The international refugee regime is operating at a challenging time as the absolute number of refugees worldwide has significantly increased, as well as the incidences and length of protracted refugee situations (PRS)⁴³⁴. At the end of 2014, 14.4 million refugees were under the mandate of the United Nations High Commissioner for Refugees⁴³⁵. Of this number, 6.4 million were in a protracted situation⁴³⁶. Protracted (prolonged) refugee situations are refugee problems unresolved within 5 years. The Somali refugees in Dadaab, Kenya, are a classical example of a protracted refugee situation that has taken 27 years and remains unresolved. Protracted refugee situations pose many hardships for refugees as they 'find themselves in a long-lasting and intractable state of limbo. Their

⁴³³M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, UK: Cambridge University Press, 2013,p.8

⁴³⁴ A PRS is understood in this dissertation as a situation when refugees are in exile for five or more years after being displaced and a durable solution is not imminently possible (UNHCR, Excom, 2009).

⁴³⁵United Nations High Commissioner for Refugees, *Global trends report 2014*. Geneva, Switzerland, Division of Programme Support and Management, 2015,p.2

This number excludes Palestinian refugees who are under the protection of the United Nations Relief and Works Agency (UNRWA).

⁴³⁶ This statistic uses the definition of a PRS as 'a situation in which 25,000 or more refugees of the same nationality have been in exile for five years or longer in a given asylum country' (UNHCR, 2015a, p. 8).

lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile.'⁴³⁷

The OAU Convention may be credited with having been the first international instrument to codify, in treaty terms, the principles on the voluntary repatriation of refugees. The relevant provisions are contained in Article V which states that:

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, 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 the 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.

⁴³⁷United Nations High Commissioner for Refugees, 'Protracted refugee situations', *Refugee Survey Quarterly*, vol.24, no. 1, 2005, p.150.

5. Refugees who freely decide to return to their homeland as a result of such assurance or their own initiative shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and inter-governmental organizations to facilitate their return⁴³⁸.

While it is worthwhile to appreciate that the provisions of the OAU Convention are comprehensive, to a large extent its implementation is dependent on the good-will of individual states. The dynamics of individual refugee situations, the nature and extent of conflict, the interests of the state of origin, the interests of the host state and those of the international organizations led by the UN refugee agency influence the manner and the processes involved in the implementation of the repatriation provisions. Compromise is therefore common with all parties lobbying in order to protect their interests as far as possible.

In the case under study, the Government of Kenya, SFG and the UNHCR signed a Tripartite Agreement on 10th November 2013 which was to be a roadmap for the voluntary repatriation of Somali refugees. It has however emerged that the Tripartite parties read from a 'different script'⁴³⁹ when it came to interpretation of the TA as they could not agree on the appropriate time to execute massive returns considering the

⁴³⁸OAU *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Adopted on 10 September 1969 by the Assembly of Heads of State and Government. CAB/LEG/24.3. It entered into force on 20 June 1974.

⁴³⁹K. Kelley, 'UNHCR re-emphasizes stance on mode of repatriation of refugees', Daily Nation, 19th September, 2016. Available at <https://www.nation.co.ke/news/UN-responds-to-claims-of-forceful-repatriation-of-refugees/1056-3385964-format-xhtml-nvrxmaz/index.html> [Accessed 6th February, 2018]

volatile in(security)situation in Somalia. While Kenya preferred a massive repatriation that could have seen Dadaab closed by end of May 2017⁴⁴⁰, the UNHCR preferred a more staggered voluntary repatriation with no 'time-bounds'⁴⁴¹. As the findings from interviews of various stakeholders suggest, the whole process of repatriation is a complex one and its dynamics cannot be merely confined to the contents of the Tripartite Agreement.

The UNHCR has pursued three durable solutions for refugees in the form of integration, resettlement and repatriation. These may in practice be implemented as Development through Local Integration (DLI), Resettlement, and the 4R's: repatriation, reintegration, rehabilitation, reconstruction.⁴⁴² The first is integration where refugees integrate with local communities in the host state. This requires the willingness of refugees to integrate and the permission from the host state to do so. It works better when refugees and locals share many similar characteristics such as language and religion among others. Second, a durable solution is resettlement where refugees are resettled in a 'third' country. This means the refugee is neither returning to the home country (first country from which they fled) nor integrate in the host state(second country that they fled to).Instead, a willing country(third country) offers to grant them asylum, which may, or not, include an offer of

⁴⁴⁰ 'Kenyan closure of Dadaab refugee camp blocked by high court', BBC, 9th February, 2017. Available at <http://www.bbc.com/news/world-africa-38917681> [Accessed 6th February, 2018]

⁴⁴¹K. Kelley, 'UNHCR re-emphasizes stance on mode of repatriation of refugees', Daily Nation, 19th September, 2016. Available at <https://www.nation.co.ke/news/UN-responds-to-claims-of-forceful-repatriation-of-refugees/1056-3385964-format-xhtml-nvrxmaz/index.html> [Accessed 6th February, 2018]

⁴⁴²United Nations High Commissioner for Refugees, *Framework for durable solutions for refugees and persons of concern*, Geneva, Core Group on Durable Solutions, 2003.

citizenship. Statistics indicate that very few refugees (about 1%) benefit from resettlement in a third country and resettlement is considered a 'rare solution to refugee crises'⁴⁴³. The UNHCR report indicates that there 'were 17.2 million refugees of concern to UNHCR around the world at the end of 2016, but less than one per cent were resettled that year'⁴⁴⁴. The third durable solution is repatriation where refugees return to their home country voluntarily. However, solutions are not easily achievable as they are largely dependent on the conditions in the countries of origin, affected by the policies of asylum and donor states, and the level of burden sharing.⁴⁴⁵

In essence therefore, the TA of 10th November 2013 is just the beginning of a long process of seeking a permanent solution to Somali refugees in Kenya and may not be signaling the end of the Somali refugee problem in Kenya. While the parties to the TA committed to the fulfillment of certain obligations as per the TA, the realization of these commitments remains elusive and has often been a source of a diplomatic incident among various stakeholders in the refugee regime.

⁴⁴³M. Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge, UK: Cambridge University Press, 2013, p.1

⁴⁴⁴<http://www.unhcr.org/resettlement.html> [Accessed 6th February, 2018]

⁴⁴⁵ Although the definition of burden sharing has changed over time, it generally refers to financial assistance and the resettlement of refugees to a third country, from often low-income countries that disproportionately carry the burden of hosting refugees (Boswell, 2003). This may also include material and financial assistance to host states meant to ease the 'burden' they are shouldering as a result of hosting refugees.

This chapter explores the obligations of the parties in the TA, through the views of various stakeholders on the ground in order to examine the ideal roles of various parties as envisaged in the TA *viz a viz* the reality of such commitments in practice.

4.1 Role and responsibility of Kenya in repatriation

According to the general principles of international law, states are obliged to protect all the individuals living within their national boundaries.⁴⁴⁶ The prime responsibility for the protection of refugees thus lies with the country in which the refugees are present. The role of the UNHCR is, therefore, complementary to the protection that states are supposed to provide to the refugees involved.⁴⁴⁷

In the case of Kenya, the need to abide by the international instruments governing the various aspects of refugees is legally supported by the constitution. Significantly, Article 2 (5) of the Constitution of Kenya 2010 states that the general rules of international law shall form part of the law of Kenya. Article 2(6) then states that any treaty or convention ratified by Kenya shall form part of the law⁴⁴⁸. However, it is arguable whether treaties relating to human rights and fundamental freedoms are self-executing, as another constitutional provision requires the State to legislate international obligations in respect

⁴⁴⁶M. Weiner, 'Ethics, National Sovereignty and the Control of Immigration' , *International Migration Review*, vol.30, no.1,p. 171

⁴⁴⁷A. Fortin, *The Meaning of 'Protection' in the Refugee Definition*, 12 *International Journal Of Refugee Law* 569 (2000).

⁴⁴⁸ The Constitution of Kenya(2010),Article 2(5) &2(6)

of human rights and fundamental freedoms.⁴⁴⁹ Thus, the Government of Kenya may use this opportunity to legislate on refugee matters to serve their interests. It appears the manner in which states domesticate the international refugee law through national legislation ends up overshadowing the ideal provisions of the international refugee regime.

Kenya, for instance, has maintained that, 'the Government of Kenya is not forcing any refugees to return'⁴⁵⁰. On the other hand, it has insisted that, 'there comes a time when we must think primarily about the security of our people...that time is now.'⁴⁵¹ While Kenya would want to be seen to be fulfilling her international obligations concerning refugees by not wanting to forcefully eject refugees, it still maintains that the obligation can be waived when her national security is threatened. Such comments are not surprising as Black and Koser⁴⁵² argue, repatriation has become a political issue and therefore the motivations of stakeholders need to be scrutinized, including host and home governments and the international community⁴⁵³. For instance, although evidently not in

⁴⁴⁹Article 21(4) of the Constitution of Kenya (2010) provides that: 'The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.'

⁴⁵⁰ Interior CS on refugee repatriation as aired by NTV on 5th May 2016. He was shielding the Government of Kenya's position from critics who interpreted the repatriation campaign by the government as amounting to forced repatriation.

⁴⁵¹ The Interior CS while announcing the government of Kenya's position to close down Dadaab refugee camps citing Kenya's national security and by implication the role the camp plays in fuelling terrorism and insecurity.

⁴⁵²R. Black, R. and K. Koser, *The End of the Refugee Cycle?* Oxford, Berghahn, 1999, p.3.

⁴⁵³ R. Black, R. and K. Koser, *The End of the Refugee Cycle?* Oxford, Berghahn, 1999, p.3.

the best interest of refugees, host states often prefer rapid repatriation, irrespective of the conditions in the state of origin.⁴⁵⁴

Host states might pressure for premature and forced repatriation if their concerns surrounding hosting refugees are not resolved, which could negatively impact the institutions and peace building efforts in the state of origin⁴⁵⁵. Milner further highlights that premature repatriation may be promoted when donor and host states have self-interests⁴⁵⁶ in doing so. This type of repatriation, however, is not a durable solution for protracted refugee situations as the factors that caused refugees to flee still exist and the preconditions for repatriation have not been met⁴⁵⁷. The biggest challenge to the proposition by Milner is the fact that those pushing for or against repatriation may not agree on whether the conditions that necessitated the flight have changed. The question is what constitutes a premature return? This is important as those pushing for return, in this case Kenya, will justify why they think conditions at home have changed to allow for return while those against will imply the conditions have remained unchanged and hence defend the need for refugees to continue enjoying international protection.

⁴⁵⁴B. Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, vol.21, no.1, 2002, p.13. See also G. Stein, *Refugee repatriation, return, and refoulement during conflict*, 1997.

⁴⁵⁵J. Milner, 'Refugees and the regional dynamics of peace building', *Refugee Survey Quarterly*, vol.28, no.1, 2009, p.17

⁴⁵⁶J. Milner, 'Refugees and the regional dynamics of peace building', *Refugee Survey Quarterly*, vol.28, no.1, 2009, p.26

⁴⁵⁷J. Milner, 'Refugees and the regional dynamics of peace building', *Refugee Survey Quarterly*, vol.28, no.1, 2009, p.26

Furthermore, many premature returns can also be attributed to a failure by the international community to protect and assist refugees⁴⁵⁸. Long also draws attention to the fact that states, rather than UNHCR, 'are liable to take the most draconian measures in order to promote repatriation'⁴⁵⁹. Kenya has, from May 2016, strongly indicated that the time for hosting Somali refugees in Kenya has run out and that the focus should now be in repatriating them. According to President Kenyatta, it was time to focus on 'post conflict reconstruction in Somalia and to ensuring a safe and humane repatriation of refugees.'⁴⁶⁰ He however maintained that Kenya was committed to her obligations under international law even in the process of repatriating Somali refugees.

Considering that focus has shifted from resettlement to repatriation at the end of the Cold War, repatriation, the process by which a refugee returns to their country of origin, continues to be the most preferred and promoted solution in the international refugee

⁴⁵⁸G. Stein, *Refugee repatriation, return, and refoulement during conflict*, 1997,p.13

⁴⁵⁹K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013,p.21

⁴⁶⁰ President Kenyatta speaking at state house Nairobi while hosting president Erdogan of Turkey on 22nd June, 2016. At the time, Turkey was also under pressure after opening her borders to about 2 million refugees fleeing the Syrian conflict and seeking refuge in Europe. Turkey had also closed her borders following the refugee mass influx. Available at <http://www.president.go.ke/2016/06/02/press-briefing-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-during-kenya-turkey-bilateral-talks-at-state-house-n/> [Accessed 7th February 2018]

regime.⁴⁶¹ Refugee regimes are the institutions, legal instruments and norms composing the institutional framework which regulates the management of refugees.

In the Cold War era, the recognition of persecution, or provision of asylum, was mainly used as a means to illustrate the failure of 'Communist regimes.'⁴⁶² Today, however, with the changes in the current political climate, repatriation is considered to be the most viable solution to the refugee crises.⁴⁶³ Given the fact that today the most distinctive feature of the refugee problem is the ever-increasing reluctance of potential asylum and resettlement countries to fulfill their international obligations, it should not be surprising that repatriation has been heavily emphasized as the paramount solution to this problem.⁴⁶⁴ The refugee regime seems to have been overtaken by the heavy burden of having to host refugees for many years, an aspect the 1951 UN Convention never contemplated at the time of its ratification.

Kenya has been generously providing asylum for hundreds of thousands of refugees from across the region. Few countries in Africa can claim to have as flexible and as accommodating an asylum regime as Kenya has made available to those escaping

⁴⁶¹ This paper will use the definition of refugee regime outlined by Scalettaris (2007, p. 49), as 'the institutions, legal instruments and norms composing the institutional framework which regulates the management of refugees.'

⁴⁶² K.E. Mahoney and P. Mahoney (eds.) *Human Rights in the Twenty-First Century A Global Challenge*, 627 vol. 2, London, 1993, 627.; see also G. Loescher, *The UNHCR and World Politics: A Perilous Path*, Oxford, 2001, p.7.

⁴⁶³ See Barbara E. Harrell-Bond, *Repatriation: Under What Conditions is it the Most Desirable Solution For Refugees? An Agenda for Research*, *African Studies Review*, vol. 32. no. 1, 1989.

⁴⁶⁴ See Garvey, *supra* note 3, at 182-183; Charles B. Keely, 'The International Refugee Regime(s): The End of the Cold War Matters', *International Migration Review* vol.35, no. 1., 2001, p.306

persecution or war in neighbouring states. Amongst these, Somalis have figured prominently: for over twenty years, Somali civilians have been fleeing the conflict that has gripped much of their country. The world's biggest refugee camp, hosting the largest Somali population outside Somalia, is in Dadaab in North Eastern Kenya, a group of five settlements that have been home to refugees since 1991. Kenya, albeit facing domestic pressure from citizens and politicians to repatriate Somali refugees, should be assisted by the international community so as not to bear this problem alone. In fact, the UNHCR has proposed that:

While the long-term confinement of refugees to camps and closed settlements is a severe restriction of their rights, it is important to acknowledge the concerns of host states as well. Receiving countries need help to overcome the political and economic obstacles that prevent them from finding alternatives to confining refugees within camps. These states need to be assisted and encouraged to allow refugees greater freedom of movement, access to social services and the right to earn a living. In this context, the two key concepts set out in the Framework for Durable Solutions are Development Assistance for Refugees and Development through Local Integration. Both recognize that refugees need not inevitably be perceived as a burden but could, in the right circumstances, be agents of development.⁴⁶⁵

Article 24 of the TA provides the roles and obligations of Kenya in the voluntary repatriation as follows:

i. Facilitate sensitization of refugees on voluntary repatriation;

⁴⁶⁵'Rethinking durable solutions', *The State of World's Refugee*. Available at https://www1.essex.ac.uk/armedcon/story_id/rethinkingdurablesolutionsrefugees.pdf [Accessed on 14th January 2016].

- ii. Facilitate access by UNHCR to Somali refugees wherever they may be in Kenya so as to implement the voluntary repatriation programme provided for in this Agreement;
- iii. Issue and or validate documentation in respect of births, marriages, divorces, adoptions, deaths or other legal status as well as educational credentials in acknowledgement of academic or vocational skills obtained by refugees in Kenya;
- iv. Simplify immigration formalities and procedures to facilitate exit from Kenya in accordance with applicable national law;
- v. Facilitate 'go and see' visits of refugees to areas of intended return, and 'come and tell' visits by Somali Federal or local authorities as provided for under Article 15 of this Agreement;
- vi. Exempt all goods of the returnees, their personal effects or communal property, including household and electronic items, food and livestock from customs and duties or taxes which would otherwise apply;
- vii. Simplify and expedite health formalities and requirements to the extent feasible in accordance with the law in the interest of facilitating easy exit from Kenya of the repatriating refugees;
- viii. Provide security escorts for the repatriation convoys, the staff of the Parties and the implementing partners engaged in the operation in Kenya;
- ix. Facilitate the joint registration with UNHCR of Somali refugees wishing to voluntarily repatriate and;

x. The Government of Kenya shall continue to provide protection and assistance to all refugees until durable solutions are attained in accordance with national and international law⁴⁶⁶.

While the TA seems to be comprehensive in terms of the responsibilities of Kenya in the repatriation process, senior Government of Kenya officials interviewed for this dissertation remained evasive on the actual responsibility of Kenya and instead chose to limit Kenya's role in repatriation, as that of providing logistical support during repatriation, security, management and control and resource mobilization for resettlement of returnees. Asked what was to be the role of the taskforce established by the Internal Security Cabinet Secretary, the Principal Secretary responded, 'Mainly is to draw the roadmap to closure, what are the logistical issues that need to be addressed, what are the costs involved, what are the security requirements and deployments required...but mainly we require of them a timetable to closure'⁴⁶⁷. These four areas can be seen as essential services that could actualize the repatriation process. It is not lost to anyone that what is envisaged in the TA as the role of Kenya goes beyond these four basic responsibilities acknowledged by the Government of Kenya. Kenya seems to be keen on her roles and responsibilities in the short term, in order to facilitate the massive repatriation, but appears less bothered as to whether Somalia is safe for returnees so as to

⁴⁶⁶This is what is provided for in Article 24 of the *Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya*, Signed 10th November 2013

⁴⁶⁷ Interior (Internal Security) Principal Secretary Dr. Karanja Kibicho while responding to a question on what was to be the role of the taskforce established by the Government of Kenya to facilitate repatriation.

ensure a sustainable repatriation process. This is because a rushed repatriation process, without due diligence on the safety and dignity of returnees in Somalia, may cause the returnees to flee again making the process unsustainable.

4.1.1 Establish logistics

The Government of Kenya, upon announcing her intentions to repatriate Somali refugees must put in place a comprehensive logistical system to support the repatriation. The logistical details entail the pre-repatriation, repatriation and post-repatriation phases. The first two squarely fall within Kenya's jurisdiction while the post-repatriation phase is mainly the responsibility of Somalia.

Although Kenya provided security and bus transport to repatriating refugees, they are accused of "dumping"⁴⁶⁸ refugees at the Kenya-Somalia border. Complaints are rife that refugees are literally squatting⁴⁶⁹.

⁴⁶⁸ A. Hamer, 'Kenya accused of 'dumping' Somali refugees back over the border with no support ' 20th October, 2016 Available at <https://www.theguardian.com/world/2016/oct/20/kenya-accused-of-dumping-somali-refugees-back-over-the-border-with-no-support> [Accessed 15th March, 2019]

⁴⁶⁹ A. Hamer, 'Kenya accused of 'dumping' Somali refugees back over the border with no support ' 20th October, 2016 Available at <https://www.theguardian.com/world/2016/oct/20/kenya-accused-of-dumping-somali-refugees-back-over-the-border-with-no-support> [Accessed 15th March, 2019]

4.1.2 Provide security

Article 12(2) of the TA provides that 'The Government of the Republic of Kenya shall be responsible for the safety and security of repatriating refugees while within Kenyan territory, according to national and international law'⁴⁷⁰. This in essence means that refugees are under the protection of the Government of Kenya until they cross the border to Somalia after which the responsibility is transferred to the Federal Government of Somalia.

Interestingly, the case of Somali refugees in Kenya is complex and paradoxical. While the Government of Kenya is ideally supposed to be protecting the 'vulnerable' refugees, in reality it is pushing for their repatriation, ostensibly for causing insecurity and threatening her national security instead. While the actual role of refugees in terror activities in Kenya remain speculative and blurred, the Government of Kenya has maintained that they have facts and statistics that support their assertion. The Deputy President, William Ruto, while attending a humanitarian summit in Turkey for instance said that, 'when we say the refugee camp poses an existential security threat to Kenya, we have facts, we have figures and we can demonstrate that that indeed is the case'⁴⁷¹.The

⁴⁷⁰Article 12(2) of the *Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya*, Signed 10th November 2013

⁴⁷¹ The Deputy President speaking at the sidelines of the World Humanitarian Summit in Istanbul, Turkey on 23 May 2016. The Deputy President and his team had sought to lobby the international community to support Kenya in her bid to repatriate Somali refugees from world's largest refugee camp, Dadaab. This speech was captured by many Kenyan and international media outlets.

refugees⁴⁷² refuted claims that they are responsible for the terror attacks on Kenya. Refugee partners (defenders), also denied these claims that refugees engage in terror activities often citing that in fact the mastermind of the Garissa University attack was the son of a Chief, a Kenyan government official⁴⁷³.

Despite accusations towards a section of the Somali refugees by the Government of Kenya, the Kenyan government has the obligation of protecting all refugees within her borders. Indeed with support and coordination from UNHCR, the GoK provides round the clock security in the vast Dadaab camps and has police stations and posts across the refugee camp. This remains an obligation both prior to, and during, repatriation.

4.1.3 Refugee management and control

Among the responsibilities given to the task force to oversee the implementation of closing down Dadaab refugee camps was that of establishing a system of refugee

⁴⁷² A focus group discussion with refugee representatives at Dadaab refugee camp on 12th November 2017. They refuted claims that refugees support and engage in terrorism.

⁴⁷³ One of the mastermind of the Garissa University attack, in which 148 university students were killed, was a son of Kenya government official-A Chief (in charge of a location-'location administrator'. His father had already reported his suspicious son to government security officials but this, too, could not deter him (and his accomplices) from staging one of the deadliest terror attacks in Kenya that received global condemnation. Those defending refugees often remind the Government of Kenya that the enemy could be within (Kenyan citizens) and not necessarily external (foreigners-refugees). See A. Laing, 'One of Garissa attack gunmen was 'government official's son' and 'bright law student', *The Telegraph*, 5th April, 2015. Available <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/11517049/One-of-Garissa-attack-gunmen-was-government-officials-son-and-bright-law-student.html> [Accessed 8th February, 2018]

Agence France-Presse, 'one of Garissa attackers identified', *Daily Nation*, 5th April, 2015, Available at <https://www.nation.co.ke/news/Garissa-Attack-Al-Shabaab-Gunmen-Abdirahim-Abdullahi/1056-2676556-nda69v/index.html> [Accessed 8th February, 2018].

management and control prior to and during the repatriation exercise. According to one Government of Kenya official, verification and transit centers are established through which refugee identity is verified before being given the repatriation package to help refugees rebuild their lives back in Somalia. Considering the vast porous border between Kenya and Somalia, transit centers in specific point of exit were also to be demarcated to facilitate the repatriation process.

4.1.4 Resource mobilization

Repatriation is an expensive venture especially when dealing with large numbers. This is the scenario in Kenya for the case of Somali refugees as she anticipates repatriating about half a million Somali refugees. Article 8 of the TA envisages the role of Kenya and other parties to the TA as that of mobilizing resources for the 'voluntary and organized repatriation of Somali refugees and the reintegration of Somali returnees'⁴⁷⁴.

Kenya has sought to lead the way for repatriation by setting aside 10 million dollars (Kenya shillings 1 billion)⁴⁷⁵ in a bid to lobby the international community to help raise the close to 200 million dollars (20 billion Kenya shillings)⁴⁷⁶ supposedly required to successfully complete the repatriation exercise. While various players have pledged or indicated an intention to contribute towards repatriation exercise, the colossal amount

⁴⁷⁴Article 8(II) of the *Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya*, Signed 10th November 2013

⁴⁷⁵http://www.standardmedia.co.ke/ktnnews/index.php?videoID=2000107801&video_title=kenyan-government-pledges-1-billion-shillings-towards-repatriation-of-dadaab-refugees[Accessed on 10th August 2016].

⁴⁷⁶http://www.the-star.co.ke/news/2016/06/24/repatriation-of-dadaab-refugees-to-cost-sh20bn_c1374341. [Accessed on 10th August, 2016].

required is yet to be realized⁴⁷⁷. Many partners also tended to have a 'wait and see' attitude before deciding to put their money into the repatriation exercise. It appears many would want to see the outcome of the first cohort to be repatriated before determining whether the repatriation process is likely to be successful and sustainable, so as to avoid recycled refugees. Indeed by end of 2017, the process of repatriating Somali refugees had slowed because of 'lack of resources, insecurity in Somalia and opposition by human rights groups'⁴⁷⁸. Others still may have been hopeful that the Government of Kenya could rescind its decision to close down the camps hence delayed or suspended their funding support for repatriation of Somali refugees.

While Kenya has maintained that, this time, it is serious in shutting down the Dadaab refugee complex, critics have argued that this threat to close down the camps could be the Government of Kenya's strategy to attract international attention and lobby for more funds to support her financial burden as it keeps the camp open. The accusation of Government of Kenya was raised by Former National Assembly Deputy Speaker, Farah Maalim, who accused the state 'of blackmailing the international community for more funding in the latest threat to repatriate thousands of refugees from Kenya'⁴⁷⁹. This is a

⁴⁷⁷ 'Funding Crisis could delay repatriation of Somali refugees', *Mogadishu Center for Research and Studies* 5th July, 2016. Available at <http://mogadishucenter.com/English/2016/07/05/funding-crisis-could-delay-repatriation-of-somalia-refugees/> [Accessed 8th February, 2018]

⁴⁷⁸ F. Oluoch, 'Efforts to lower refugee numbers run into challenges', *Relief Web*, 30th August 2017. Available at <https://reliefweb.int/report/kenya/efforts-lower-refugee-numbers-run-challenges> [Accessed 8th February, 2018]

⁴⁷⁹ A. Hajir, 'State accused of blackmail in refugee repatriation standoff', *Daily Nation*, 15th May, 2016. Available at <https://mobile.nation.co.ke/counties/refugee-repatriation-standoff/1950480-3204312-12ymkelz/index.html> [Accessed 8th February, 2018]

claim that the Government of Kenya has vehemently denied insisting that no amount of money from donor community would make Kenya change her position on repatriation of Somali refugees⁴⁸⁰. The PS was explaining the position of the Government of Kenya concerning her decision to close Dadaab refugee camps citing the threat to national security that militants in the camp poses. The camp has remained open at the time of compiling this dissertation despite the many closure deadlines set by the Government of Kenya.

4.1.5 Role of Kenya in induced repatriation

While parties to the TA 'agree that the decision of the refugees to repatriate shall be based on their freely expressed wish and their relevant knowledge of the conditions within the country of origin and the areas of return'⁴⁸¹, Kenya has always signaled that Somali refugees may have to repatriate regardless of the conditions in Somalia.⁴⁸² Although Kenya has been issuing statements that may be construed to mean threats that support involuntary repatriation since the 1990's, it has never, in the strict sense, carried out these

⁴⁸⁰ Dr. Karanja Kibicho, Principal Secretary of Interior ministry responding to claims that the Government of Kenya was blackmailing the international community over refugees so as to get more funding. He was responding to an in an interview with Eric Njoka on 11th May, 2016 at the K24 TV Studios. The PS was explaining the position of the Government of Kenya concerning her decision to close Dadaab refugee camps citing the threat to national security that militants in the camp poses.

⁴⁸¹ Article 10(2) of the Tripartite Agreement between Kenya, Somalia and UNHCR

⁴⁸² After the Westgate attack in Nairobi on 21 September 2013 and the Garissa University terror attack on 2nd Aril 2015 in which more than 200 people were killed, the Government of Kenya maintained that cells of the Somali refugees in Dadaab could have been linked to the attack(s). Consequently, the Government of Kenya asserted that the time for repatriation of Somali refugees had come with timelines of three months or so being mentioned.

threats until 2014⁴⁸³. After the Westgate attack in Nairobi on 21 September 2013 and the Garissa University terror attack on 2nd April 2015 in which more than 200 people were killed, the Government of Kenya maintained that cells of the Somali refugees in Dadaab could have been linked to the attack(s)⁴⁸⁴. Consequently, the Government of Kenya asserted that the time for repatriation of Somali refugees had come. Speaking at the time, Kenya's Deputy President William Ruto maintained that, 'We have asked the UNHCR to relocate the refugees in three months, failure to which we shall relocate them ourselves...the way America changed after 9/11 is the way Kenya will change after Garissa university attack'⁴⁸⁵

However, the announcement by the Government of Kenya in May 2016 that it was planning to repatriate Somali refugees by 30th November 2016 could have signaled a new era of a refugee regime in Kenya. Unlike previous pronouncements by the predecessor governments, the Government of Kenya seem to have been serious and campaigns to close down the Dadaab camps soon started in earnest with thousands of Somali refugees repatriating to Somalia. Records from the UNHCR show that about 75000 refugees have

⁴⁸³Kenya intensified its restrictive approach to Somali refugees from 2014. Like the USA 9/11 attack that changed USA approach to security, Kenya's apathy to Somali refugees worsened especially after it emerged that one of the West Gate terror (21st September 2013) masterminds once lived at Dadaab refugee camps. Since then the Government of Kenya and the general population have viewed the Somalis with suspicion.

⁴⁸⁴'West Gate attack: MP's to call for refugee camps to close', BBC, 30th September 2013. Available at <http://www.bbc.com/news/world-africa-24339508> [Accessed 8th February, 2018]

⁴⁸⁵ D. Miriri, 'Kenya demand UN removes massive Somali refugee camp', Reuters, 11th April, 2015 Available at <https://www.reuters.com/article/us-kenya-attacks/kenya-demands-u-n-removes-massive-somali-refugee-camp-idUSKBN0N20DQ20150411> [Accessed 8th February, 2018]

repatriated between 2014 and end of 2017⁴⁸⁶. While many of these may have repatriated voluntarily, a significant number may have involuntarily repatriated after the Government of Kenya threatened to shut down the refugee camp. It remains to be seen whether the camp will actually be closed down and how sustainable the massive repatriation exercise will be. This bold move by the Government of Kenya, which has attracted both support⁴⁸⁷ and criticism⁴⁸⁸ from various state and non-state actors⁴⁸⁹, is not a new phenomenon. Kenya seems to have learnt from various countries that at some point repatriated refugees, involuntarily disregarding the principle of *non refoulement* that prohibits coerced or forceful repatriations.

For instance, since the signing of a tripartite agreement between the governments of Burundi and Tanzania, and the UNHCR, all of those who fled Burundi for Tanzania in the 1990s have been coming under increasing pressure to return.⁴⁹⁰ In August 2012, the government of Tanzania, with the support of UNHCR and the cooperation of the government of Burundi, paved the way to legally deport those who continued to resist

⁴⁸⁶<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Voluntary-Repatriation-Analysis-15-December-2017.pdf> [Accessed 8th February, 2018]

⁴⁸⁷B. Wafula, '69% of Kenyans support repatriation of Somali refugees-IPSOS', Citizen Television, 17th November, 2018. Available <https://citizentv.co.ke/news/69-of-kenyans-support-repatriation-of-somali-refugees-ipsos-149163/> [Accessed 8th February, 2018]

⁴⁸⁸Aljazeera, 'Kenya's plan to shut Dadaab refugee camp criticized', 3rd June, 2016. Available at <http://www.aljazeera.com/news/2016/06/dadaab-refugee-camp-somalia-diplomat-> [Accessed 8th February, 2018]

⁴⁸⁹Human Rights Watch, 'Kenya: Protect Somalis facing conflict, abuses, drought', 23rd March, 2017. Available at <https://www.hrw.org/news/2017/03/23/kenya-protect-somalis-facing-conflict-abuses-drought> [Accessed 8th February, 2018]

⁴⁹⁰ See IRRI and Rema Ministries, 'Resisting Repatriation: Burundian Refugees Struggling to Stay in Tanzania,' September 2011; and the Centre for the Study of Forced Migration and IRRI, 'I Don't Know Where to go: Burundian Refugees in Tanzania under Pressure to Leave,' September 2009.

voluntary repatriation. They did this through the invocation of cessation, one of the mechanisms in refugee law through which refugee status can be withdrawn in certain circumstances, and through the conduct of individual assessments to determine whether the refugees continued to require international protection. At the end of the assessment, 38,050 were declared to have lost their refugee status.⁴⁹¹ Having lost the refugee status, finally, at the end of October 2012 the Tanzanian army moved in and started to load the now former refugees onto trucks and take them to Burundi.⁴⁹² When to invoke the cessation clause remains a controversial subject as it eventually paves the way for what can be termed as 'legal involuntary repatriation'.

However, there are risks involved when involuntary repatriation is practiced by a host state. Apart from going against the international refugee instruments that safeguard against forced return, such coerced repatriations could worsen conditions in the home country (as a result of intense conflict) and may even lead to the massive influx of refugees (Andersen 1996:206). Host countries, including Kenya, should only support the repatriation of Somali refugees when such actions lead to sustainable returns in Somalia so as not to produce another refugee influx. This argument is supported by the views of some refugees in Dadaab who, as some put it, thought that the Tripartite Parties had

⁴⁹¹ Figure according to the government of Tanzania, 'The Government of Tanzania Determined to Close Mtabila Refugee Camp in Kigoma,' not dated, available at <http://www.moha.go.tz/index.php/component/content/article/82-news-and-events/181-the-government-of-tanzania-determined-to-close-mtabila-refugee-camp-in-kigoma>.

⁴⁹² Lucy Hovil and Theodore Mbazumutima, 'Tanzania's Mtabila camp is finally closed,' Pambazuka News, 13 December 2012, available at <http://www.pambazuka.org/en/category/features/85766>.

failed because 'returnees repatriated to areas controlled by militia may be recruited into militia army'⁴⁹³and that 'Some repatriates came back to the camps because of insecurity in Somalia'. This could worsen conflict and lead to more refugee influx.

Even after signing the TA on 10th November 2013, as a roadmap for voluntary repatriation of refugees, the Government of Kenya seems to be piling pressure on Somali refugees in Dadaab to repatriate in what may amount to involuntary repatriation contrary to the provisions of the TA⁴⁹⁴. Responding to a question from Parliament's Administration and National Security Committee member Mohamed Diriye (Wajir South), Interior Cabinet Secretary Joseph Nkaissery claimed that Somali refugees in Dadaab were ready to repatriate but UN agencies and NGO's were frustrating efforts to repatriate them. He maintained that, 'There are big wars there; otherwise many refugees are willing to go back, but the NGOs are not interested because they make a lot of money in the process'.⁴⁹⁵ The Interior CS would later ask the National Assembly's Security and Administration Committee to help the government in its efforts to send the refugees at Dadaab back home. In that Committee, he was quoted to have argued that 'We need to move, many Somalis want to go back home, but they are held back by NGOs. If this committee can come up and demand timelines, then the government can

⁴⁹³ Interview with Hassan, a Somali refugee at Hagadera, Dadaab refugee camp 12th February, 2017.

⁴⁹⁴Article 10 of *Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya*, Signed 10th November 2013

⁴⁹⁵ Jacob Ng'etich 'UN agencies frustrating repatriation of refugees, says Joseph Nkaissery', *The Standard* available at: www.standardmedia.co.ke/mobile/article/2000194281/un-agencies-frustrating-repatriation-of-refugees-says-joseph-nkaissery[Accessed on 9th January 2016]

move'.⁴⁹⁶ Although late Cabinet Secretary Joseph Nkaissery seemed to blame the NGOs for the reluctance of refugees to repatriate, it is clear that the refugees themselves could be opposing the move to repatriate if one considers the dire security situation in Somalia. Mr. Nkaissery reported that the Government of Kenya, Somalia and Jubaland region administration (in Somalia) had identified 1000 hectares to build a refugee camp inside Somalia. He further noted that, 'The UN and other agencies have set aside sh. 10.5 billion for the construction of a refugee camp that can accommodate 50,000 people near Ras Kamboni. The building will include schools, health facilities and an airport.'⁴⁹⁷ It therefore appears that while the Government of Kenya is pushing for repatriation in the shortest time possible, the UN agencies and NGO's, are keen on how and when the whole process should be carried out. They are skeptical because they may not be convinced that the security situation in Somalia will guarantee a safe and dignified return. Aware of the volatile situation in Somalia, the UNHCR and NGOs fear that sending back Somali refugees en mass may create an even more complex humanitarian crisis.

Kenya's push to repatriate Somali refugees from Dadaab camps seem to have moved a notch higher in May 2016 when the Government of Kenya disbanded the Department of

⁴⁹⁶ Interior CS Joseph Nkaissery appearing before a parliamentary committee on Security and Administration. His comments 'NGOs holding back Somali refugees, Interior CS Joseph Nkaissery says', Available at: www.nation.co.ke/news/-/1056/3107724/-/q458ybz/-/index.html Accessed on 15th April, 2016

⁴⁹⁷ Jacob Ng'etich 'UN agencies frustrating repatriation of refugees, says Joseph Nkaissery', *The Standard* available at: www.standardmedia.co.ke/mobile/article/2000194281/un-agencies-frustrating-repatriation-of-refugees-says-joseph-nkaissery Accessed on 9th January 2016

Refugee Affairs claiming that the time for hosting Somali refugees was over and that efforts should now be geared towards the process of repatriating them. Making the revelation during a press briefing, the Interior CS Joseph Nkaissery maintained that, 'For reasons of pressing national security, the government of the Republic of Kenya has commenced the exercise of closing Dadaab Refugee Complex'.⁴⁹⁸ This position of government has, however, attracted criticism from a section of scholars like Philip Nyinguro, a political scientist and lecturer at the University of Nairobi. According to him, 'The closure of Dadaab sounds like one of those populist ad hoc decisions that the government of the day makes to please a section of the day's power brokers. The underlying issue here is Kenya's complete lack of a consistent policy on how to deal with its refugee numbers'.⁴⁹⁹ Other commentators like Muthuma Mathiu seem to suggest that the attack on Kenyan troops in El Adde, Somalia on 15th January 2016 was a game changer for Kenyan-Somali relations⁵⁰⁰, that may have informed Kenya's decision to repatriate Somali refugees, whether voluntarily or involuntarily. It appears the Government of Kenya realized that the security problems facing Somalia are deep rooted and not even the presence of Kenya Defence Forces could change this reality. The UNHCR on the other hand, perhaps not wanting to engage the Government of Kenya in a political contest over repatriation, simply insisted that the repatriation process to

⁴⁹⁸D. Wesangula, 'Why closure of Dadaab demands more than government decision', *The Standard on Sunday*, May 15, 2016.p9

⁴⁹⁹D. Wesangula, 'Why closure of Dadaab demands more than government decision', *The Standard on Sunday*, May 15, 2016.p9

⁵⁰⁰M. Mutuma, 'Now is the right time to settle question of Somali's refugees', *Daily Nation*, Friday 13, 2016.p14

Somalia must be voluntary.⁵⁰¹ Many state and non-state actors have never agreed on whether Somalia is safe to warrant the repatriation of Somali refugees and the closure of Dadaab refugee camps⁵⁰². Refugees too remain skeptical of the security situation in Somalia with some vowing never to step into Somalia⁵⁰³. There is simply no concurrence of the security situation in Somalia making it problematic to determine whether it is (not) the right time to repatriate.

⁵⁰¹ See Andrian Edward 'Kenya: Repatriation process to Somalia starting, must be voluntary', available at: www.unhcr.org/cgi-bin/texis/vtx/search?page=search&skip=54&docid=52948a7d9&query=somalia [Accessed on 16th September, 2016]

⁵⁰² B. Wafula, '69% of Kenyans support repatriation of Somali refugees-IPSOS', CitizenTV, 17th November, 2018. Available <https://citizentv.co.ke/news/69-of-kenyans-support-repatriation-of-somali-refugees-ipsos-149163/> [Accessed 8th February, 2018]

Aljazeera, 'Kenya's plan to shut Dadaab refugee camp criticised', 3rd June, 2016. Available at <http://www.aljazeera.com/news/2016/06/dadaab-refugee-camp-somalia-diplomat-> [Accessed 8th February, 2018]

Human Rights Watch, 'Kenya: Protect Somalis facing conflict, abuses, drought', 23rd March, 2017. Available at <https://www.hrw.org/news/2017/03/23/kenya-protect-somalis-facing-conflict-abuses-drought> [Accessed 8th February, 2018]

⁵⁰³ Interview with Ali Omar at Dagahaley refugee camp on 24th November 2016



An aerial photo showing the market section of the Hagadera camp in Dadaab, May 8, 2015. This is one of the camps in Dadaab. Such camps, Kenya government maintains, is what breed terrorists. Photo: Reuters/Thomas Mukoya.

In mid-September 2016, a few months into the 'voluntary' repatriation exercise, a Human Rights Watch (HRW) report accused Kenya of abandoning repatriated refugees. The report quotes a woman who, after repatriating to Somalia in January 2015, had to find her way to Dadaab camps after finding Somalia inhabitable due to insecurity. According to

the report, on arrival, the woman was denied registration by Kenyan authorities'⁵⁰⁴.The report further argues that:

Kenya's repatriation program for Somali refugees, fuelled by fear and misinformation, does not meet international standards for voluntary refugee return...The Kenyan authorities are not giving Somali refugees a real choice between staying and leaving, and the UN refugee agency isn't giving people accurate information about security conditions in Somalia⁵⁰⁵.

The UNHCR seem to be under pressure from the displacement crises across the world with an 'unprecedented 65.6 million people around the world have been forced from home'⁵⁰⁶. Among them are nearly 22.5 million⁵⁰⁷ refugees, over half of whom are under the age of 18. These huge figures coupled with diminishing funding may have stretched the capacity of the UNHCR and creates a situation where it is unable to discharge its mandate fully. The fact that large parts of remote Somalia are inaccessible and security volatile has hindered organizations like UNHCR and others from getting accurate information about Somalia. The federal government of Somalia is also too weak and lacks sufficient capacity to provide adequate information too.

⁵⁰⁴ <https://www.hrw.org/news/2016/09/13/kenya-abandoning-somali-refugees>
[Accessed on 16th September, 2016]

⁵⁰⁵ Human Rights Watch, *Kenya: Involuntary Refugee Returns to Somalia*, 2016. Available at:
www.hrw.org/news/2016/09/14/kenya-involuntary-refugee-returns-somalia. [Accessed on 18th
September, 2016.]

⁵⁰⁶ <http://www.unhcr.org/figures-at-a-glance.html> [Accessed 9th February 2018]

⁵⁰⁷ <http://www.unhcr.org/figures-at-a-glance.html> [Accessed 9th February 2018]

Commenting on the hastened repatriation exercise, the same report argues, a Kenya government official in Dadaab observed that 'If we send 1,000 people home under the voluntary repatriation agreement but we then register 1,000 new arrivals, we would not get the job done'.⁵⁰⁸ However the Government of Kenya refuted the report by HRW reaffirming her commitment to close down Dadaab refugee camps by 30th November 2016. Responding to the claims by HRW, Interior Principal Secretary Dr. Karanja Kibicho noted that, 'These people are voluntarily going home (Somalia)'.⁵⁰⁹ This is despite reports that sections of refugee leaders are opposed to the repatriation and complained of intimidation by Government of Kenya officials to those opposed to repatriation. One leader lamented that, 'When I tried to tell the official that people can't go back, that it is not safe as he suggests, he pointed his finger at me and told me to sit down'.⁵¹⁰ Analysis of interviews shows that refugees are uncertain about repatriation because of fears about their safety and security in Somalia. Of 15 refugee respondents in Dadaab, only 2 of the refugees perceived Somalia as safe. The majority felt that Somalia was unsafe because 'Fighting is going on in Somalia', 'parts of the country still under terror groups', and that the 'Somalia government is weak'⁵¹¹, among many similar responses. The findings also indicate that the two refugee respondents who perceived Somalia as 'safe' for return were

⁵⁰⁸<https://www.hrw.org/news/2016/09/13/kenya-abandoning-somali-refugees>

Accessed on 16th September, 2016

⁵⁰⁹www.standardmedia.co.ke/article/2000216117/kenya-denies-abuse-of-refugees-in-push-to-close-somali-camp/?pageNo=2

Accessed on 16th September 2016

⁵¹⁰www.standardmedia.co.ke/article/2000216117/kenya-denies-abuse-of-refugees-in-push-to-close-somali-camp/?pageNo=2

⁵¹¹ Responses of Dadaab refugees on the perceived safety of Somalia. Data collected in 29th August 2016. They were responding on the reasons why they perceived Somalia as unsafe for return.

informed by the fact that the conditions at the refugee camps were deteriorating and suggested that refugees have no other alternative apart from repatriating to 'safe' Somalia. Asked whether they thought Somalia was safe, they replied in the affirmative with reason being because, 'Many refugees go to Somalia to do business' and that 'after all, food security in the camps is inadequate and security in the camp is deteriorating too'.⁵¹² While the reports of booming businesses in Somalia may be a positive pull factor for some, it does not in essence mean that Somalia is habitable, free from conflict and a place in which the human security needs of refugee returnees can be met.

The deteriorating security in Dadaab camp is a negative push factor that could be pushing refugees to repatriate regardless of the conditions at home. The deteriorating security situation in the camps is like a double-edged sword for refugees who face general violence and criminality from the sprawling congested settlement and also live in fear of the Government of Kenya crackdown on refugees who are treated with suspicion of being terrorists.

4.2 Role of Somalia in repatriation

It is estimated that approximately one million Somalis are living outside Somalia, across many countries of the developed world, as well as in camps in Ethiopia and

⁵¹² Responses of Dadaab refugees on the perceived safety of Somalia. Data collected on 29th August 2016. The views of these respondents indicate that refugees may perceive Somalia as safe based on the implied opportunities it could provide but not necessarily because of an objective security assessment.

Kenya.⁵¹³Noting the plight of Somali refugees residing in north-eastern Kenya, then Presidents Mwai Kibaki of Kenya and Hassan Sheikh Mohamud of Somalia, pledged to 'work together and with the international community to come up with modalities for their orderly return to Somalia to rebuild their lives and participate in the development of their motherland.'⁵¹⁴ Before meeting President Hassan Sheikh Mohamud, President Mwai Kibaki, had earlier in May 2012, requested the assistance of the international community to assist in the relocation of Somali refugees to recovered areas in southern Somalia.⁵¹⁵ President Kibaki added that the Dadaab camps were unsustainable and that they were draining national resources. In order to carry this out, the Government of Kenya required the co-operation of the international community and Somalia, in order to receive the refugees who would voluntarily return.

Even with the mounting pressure from Kenya for a speedy repatriation of Somali refugees, the government of Somalia has been hesitant to allow the massive return of refugees fearing it could destabilize the already volatile situation at home. Consequently, warnings have been sounded that increased pressure on fragile services as a result of increased population numbers due to return movements from neighbouring countries

⁵¹³H. Sheikh, and Healy, S. *Somalia's missing million: The Somali diaspora and its role in development*. UNDP, 2009 Somalia.

⁵¹⁴<http://sunatimes.com/articles/2479/Presidents-of-Kenya-and-Somalia-Joint-Communique> 21 st December, 2012. [Accessed on 15 June 2016].

Abdi, M., 'Presidents of Kenya and Somalia Joint Communiqué', Network Alshahid - December 2012 http://english.alshahid.net/archives/34032?utm_source=Alshahid&utm_medium=twitter&utm_campaign=Feed%3A+AlshahidNetwork+%28Alshahid+Network%29

⁵¹⁵ Sabahi online, 'Kibaki requests aid for refugee repatriation' Sabahi online - May 2012 http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2012/05/03/newsbrief-04 [Accessed on 15 June 2016]

could lead to tensions with local communities and Internally Displaced Persons (IDP's) living in the affected areas.⁵¹⁶ Similarly, increased competition over land and property could trigger further conflicts and insecurity.⁵¹⁷

Responding to Kenya's decision to repatriate Somali refugees by November 2016, the Somali Prime Minister Omar Abdirashid Ali Sharmarke lamented that:

We want our refugees back. Definitely...but we don't want Kenya to push [out] refugees at this stage in time, because it can create much more insecurity if these refugees are just kind of thrown out, with nothing on the civil society end. These are youth-they can join radical groups and create more instability for the two countries⁵¹⁸.

According to him, Kenya's intense calls for repatriation may have been politically motivated in the context of the Kenyan election in 2017, the decision to close the Dadaab

⁵¹⁶UNHCR, *Action Plan 2016-2017, Integrated Action Plan for Sustainable Return and Reintegration of Somali Refugees from Kenya to Somalia*, October 2015, <http://www.unhcr.org/561e54069.html>, pp. 40, 44, 50. See also, UNHCR, *Yemen Situation: Regional Refugee and Migrant Response Plan Overview, October - December 2015 / January - December 2016 (Preliminary estimates)*, 5 October 2015, <http://www.refworld.org/docid/561378d24.html>. Returnees from Kenya who were interviewed by Justice Forum and the International Commission of Jurists reported that they were living as IDPs after their return to Mogadishu in 2014. They reported experiencing difficult living conditions, with insufficient access to food and water, overcrowding, no access to education for their children, as well as concerns relating to insecurity. Some also reported living in fear of being profiled as a member of Al Shabaab by government forces. Justice Forum and International Commission of Jurists, *Dignity Denied: Somali Refugees Expelled from Kenya in 2014*, 4 September 2015, <http://www.refworld.org/docid/565da2fba.html>, pp. 15, 22, 25, 28, 33, 40.

⁵¹⁷The increasing number of returnees has reportedly already led to an increase in the number of disputes over land and property, as well as an increasing number of forced evictions and relocations of IDPs. NRC/IDMC, *Somalia: Over a Million IDPs Need Support for Local Solutions*, 18 March 2015, <http://www.refworld.org/docid/550fcb244.html>, pp. 9-11. See also Legal Action Worldwide and Norwegian Refugee Council, *Housing, Land and Property in Somalia, Persons of Concern in Somaliland and South-Central Somalia*, October 2014, <http://www.refworld.org/docid/565da3ed4.html>, pp. 27-29, 36-37.

⁵¹⁸ Somali PM was responding to the *Washington Post* on 15th June, 2016. Available at: www.washingtonpost.com/blogs/post-partisan/wp/2016/06/15/Somalias-prime-minister-we-don-t-want-kenya-to-push-out-refugees/

camps being popular among many Kenyans. Refugee repatriation has been a hot political tool that presidential aspirants have not hesitated to utilize whenever an election approaches with calls for repatriation often increasing towards an election during the President Moi's , Kibaki's and now the Kenyatta's regimes.

Unlike the PM Omar, H.E Hassan Sheikh Mohamud President of the Federal Republic of Somalia while on an official visit to Kenya from 6th-8th June 2016 visited Dadaab camps and iterated his support for the repatriation process. In a joint communiqué between Kenya and Somalia, He assured Somali refugees that the government of Somalia is committed to receive them back home to participate in the process of state building, peace building and national reconciliation. He reassured them that the repatriation will be orderly, humane and dignified as per the Tripartite Agreement and also expressed deep gratitude for the generosity and hospitality of Kenyans for hosting his people for the past quarter of a century.⁵¹⁹

According to Bradley states of origin (like Somalia in this case) may encourage and use repatriation to enhance their perceived, if not actual, legitimacy, in post-conflict

⁵¹⁹ President Hassan Sheikh Mohamud, President of the Federal Republic of Somalia while on an official visit to Kenya from 6th-8th June 2016. He had been invited by president Uhuru Kenyatta of Kenya as an attempt by Kenya to mobilize and lobby the international community to support Kenya's push for repatriation of Somali refugees. The official communiqué is available at: <http://www.president.go.ke/2016/06/08/joint-communique-of-the-republic-of-kenya-and-federal-republic-of-somalia/> [Accessed on 23/08/2016].

situations⁵²⁰. This is because states of origin view refugees as ‘highly politicized symbols’ and their return is in essence, a public statement that there is no longer the fear of persecution.⁵²¹ Bradley argues that often times during the initial stages of a peace process, refugees are pushed to return even though conditions are not yet suitable, because repatriation is considered an important part of peace-building⁵²².

An interesting example of a state of origin’s motives for encouraging their citizens to return is the Rwandan government after the genocide in 1994. The Rwandan Patriotic Front (RPF) government strongly advocated that the country was safe for refugees to repatriate and viewed their return as necessary in order to rebuild the country and gain legitimacy as a new government.⁵²³The fact that refugees were not repatriating on their own, prior to being forced to do so, was seen as an embarrassment by the government.⁵²⁴Although obviously inaccurate, the government went so far as to assert

⁵²⁰M. Bradley, ‘Rethinking refugeehood: Statelessness, repatriation, and refugee agency’, *Review of International Studies*, vol.40, no.1, 2014, p.114.

⁵²¹ L. Hammond, ‘Voluntary’ repatriation and reintegration. In Fiddian-Qasmiyah, G. Loescher, K. Long & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press, 2014, p.508

⁵²²M. Bradley, ‘Rethinking refugeehood: Statelessness, repatriation, and refugee agency’, *Review of International Studies*, vol.40, no.1, 2014, p.113

⁵²³B. Whitaker, *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002,p.8

⁵²⁴B. Whitaker, *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002,p.8

that refugees who did not return were participants in the genocide and were avoiding being held accountable for their actions.⁵²⁵

Even though the Somali Federal Government (SFG) may be willing to facilitate repatriation of Somali refugees as a way of legitimizing their government, especially in the eyes of the international community, it is evident that within Somalia there are spoilers who may not want the government to stabilize for their own perceived selfish interests. The activities of these spoilers are well captured by professor Menkhaus when he contends that:

In Somalia, some spoilers have successfully undermined peace accords to perpetuate armed conflict; others have acted only to undercut local efforts to improve law and order and reduce criminality; still others support peace building and the reduction of crime, but block efforts to revive an effective central government. The latter category includes many businesspeople who need a predictable, safe, and peaceful environment in which to conduct commercial activities, but who fear that a revived central government will become repressive and predatory at their expense. The history of the state in Somalia gives this category of state-building spoilers legitimate cause for concern⁵²⁶.

⁵²⁵ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013,p.13

⁵²⁶K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, vol.31, no.3, 2007, pp.75-76.

Indeed, as captured by Professor Menkhaus, several actors within Somalia have spoiled the state-building process despite the immense support that such an initiative has received from the international community. The Somali Federal Government (SFG) control in Somalia is weak⁵²⁷. Somali military and police lack professional training and sophisticated weaponry and there is accusation of widespread corruption⁵²⁸. This has reduced the capacity of the government to bring Somalia under control and Al Shabaab has exploited these loopholes to promote lawlessness in Somalia. Consequently, the country has a reputation for lawlessness, insecurity and high levels of rape and other forms of sexual violence.⁵²⁹

With respect to states of origin, and in this case Somalia, 4Rs concept of repatriation, reintegration, rehabilitation and reconstruction focus on improving the sustainability of repatriation. It does this by fostering the capacities and institutional partnerships necessary to ensure the smooth transition from emergency relief to long-term development. Its premise is that repatriation must involve more than transferring refugees across the border; rather, it must strive to create an environment conducive to a sustainable return. To succeed in this task, it must nurture partnerships with a range of government and development actors. As stipulated by UNHCR's Executive Committee in

⁵²⁷Somali military and police are weak as they lack professional training and sophisticated weaponry

⁵²⁸Reuters, 'US suspends aid to Somalia's battered military over graft', *The Star*, 14th December 2017.

https://www.the-star.co.ke/news/2017/12/14/us-suspends-aid-to-somalias-battered-military-over-graft_c1685316 [Accessed 9th February 2018]

⁵²⁹UN Security Council, Report of the Secretary-General on Somalia, 3 September 2013, para 42; Report of the Secretary-General on Somalia, 31 January 2013, para 12.

2004, it is crucial to ensure that appropriate levels of security, social services and economic opportunity are available to returnees.⁵³⁰

The UNHCR argues that:

The 4Rs concept is now fairly uncontroversial. It simply combines the notion of voluntary repatriation with the idea of post-conflict reconstruction. The latter has been part of mainstream development discourse since the late 1990s. States of origin rarely pose objections to return, while asylum states are keen to emphasize it as the ideal durable solution. For their part, donor states often have specific economic and political interests in reconstruction. As a consequence, major development agencies already have mechanisms focusing on post-conflict reconstruction. Almost everyone is receptive to the idea; the challenge is to build a framework for institutional collaboration to ensure smooth implementation.⁵³¹

Based on the above statement, the UNHCR emphasizes that because states of origin rarely pose objections for return, repatriation seem to be the most feasible especially when dealing with large numbers of refugees. The 4R's (repatriation, reintegration, rehabilitation and reconstruction) concept developed by UNHCR focuses on improving the sustainability of repatriation. After repatriation, refugees should reintegrate with fellow citizens. Because some refugees may have been in exile for long, they should be rehabilitated so as to fit the current dynamics of his/her country of origin. This will then help refugees participate fully in the reconstruction in the post-conflict period.

⁵³⁰UNHCR, 'Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees', Executive Committee Conclusion No. 101 (LV)-2004, 8 October 2004.

⁵³¹ UNHCR/S.Hopper/2003 Rethinking Repatriation. *The State of World's Refugee*. Available at https://www.essex.ac.uk/armedcon/story_id/retl [Accessed on 14th January 2016]

Donor states play an integral role in the reconstruction process and have both economic and political interests. Donor states during reconstruction may be looking at the economic prospects of say trade, agriculture, exploration etc and tend to align their reconstruction support towards possible bilateral or multilateral agreements that could benefit both countries. Donor states and the post-conflict state should therefore strive to build a framework for institutional collaboration to ensure smooth implementation so as to achieve the set goals.

4.2.1 Provide security for returnees in Somalia.

The TA envisages that ‘The Government of the Federal Republic of Somalia shall be responsible for the safety and security of the returnees once within the territory of Somalia in accordance with National and International Law’⁵³². It enumerates her roles and obligations in Article 25 of the TA as follows:

- i. Facilitate the safe, dignified and sustainable return;
- ii. Ensure return and reintegration without fear of harassment, intimidation, persecution, discrimination, prosecution or any punitive measures whatsoever on account of having left, or remained outside Somalia;
- iii. Create conditions conducive to sustainable return and reintegration of returnees;

⁵³² Article 12(3) of the Tripartite Agreement, 10th November, 2013.

- iv. Guarantee that all Somali refugees living in Kenya wishing to return to Somalia, shall be able to do so without any legal or other hindrances, and that any of their family members who are non-Somali citizens should be able to join them for the purposes of maintaining family unity, and have their residence status expedited subject to national law;
- v. Simplify formalities for the return of refugees and facilitate the entry of all their goods, including of commercial nature or quantity, personal and household effects free from any customs and excise duties or taxes. Controls and inspections at the entry point will be carried out expeditiously, with due respect to the dignity and basic human rights of the returnees;
- vi. Take all necessary measures to allow returnees to settle in their areas of origin or any other part of the country of their choice. In addition, ensure freedom of movement of the returnees as provided for in the country's national legislation and in accordance with international human rights standards;
- vii. Commit to promote durable peace and national reconciliation;
- viii. Establish fair and accessible procedures to settle any claims that the returnees may make for restitution of lands or other property left behind when they were forced to flee;
- ix. Ensure that the returnees shall enjoy property ownership and protection acquired upon return, in accordance with the national laws;

- x. Recognize the legality of births, adoptions, deaths, marriages or divorces which may have taken place during asylum as read together with Article 24 (III);
- xi. Recognize as appropriate and in accordance with 'applicable national law, certifications, qualifications and skills obtained from recognized institutions while residing in Kenya;
- xii. Issue to the returnees all documents necessary for the exercise and enjoyment of their respective legal rights such as passports, personal identification documents, birth, death, marriage certificates and land title deeds;
- xiii. Facilitate the issuance of new documents or the replacement of those lost in the course of displacement without imposing unduly restrictive or prohibitive conditions, costs or delays;
- xiv. Facilitate all the activities of UNHCR relating to the repatriation operation provided for in this Agreement including granting free and unhindered access to UNHCR officials to the returnees, accompanying the returnees to Somalia, conducting effective monitoring of their legal, physical and material situation and to make appropriate interventions;
- xv. Facilitate the reintegration of the returnees and their enjoyment of all the social, economic, civil, cultural: and political rights provided for in the laws of the country, including fair and equal access to public services;
- xvi. Facilitate the movement into and within its territory of the staff of UNHCR and its partners and ensure that vehicles, relief goods and equipment required for

use in implementing the voluntary repatriation and reintegration of the returnees can be brought into and used in the country free of duty, customs or other charges;

xvii. Ensure the safety and security of the returnees; including when in transit in Somalia while proceeding to their final destinations;

xviii. Guarantee the safety and security of the staff of UNHCR and partners engaged in the repatriation and reintegration operation and;

xix. Facilitate 'go and see' visits by refugee to areas of intended return, and 'come and tell' visits by Somali Federal or local authorities as provided for under Article.15 of this Agreement⁵³³.

While the TA clearly stipulates the responsibility of the government of Somalia in helping Somali refugee returnees settle in Somalia, questions abound as to whether it has the capacity to carry out these functions as envisaged in the TA. A recent UNHCR updates report indicates that the security agencies in particular lack the capacity to carry out their functions effectively-It has been reported that the police and security forces lack capacity.⁵³⁴ Civilian authorities do not maintain effective control over the security

⁵³³Article 25 of the Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya, Signed 10th November 2013

⁵³⁴'In the cities from which Al Shabaab has been driven away, law and order has decreased. The police associated with SFG or their allies, lack the capacity and the integrity needed to be able to function.' Lifos (Swedish Migration Board), *Security Situation in Southern and Central Somalia*, 29 April 2015 (in Swedish, with a summary in English),

<http://Lifos.migrationsverket.se/dokument?documentSummaryId=34553> (hereafter: Lifos, *Security Situation in Somalia*). 'Police were generally ineffective', United States Department of State, *2015 Country Reports on Human Rights Practices - Somalia*, 13 April 2016, <http://www.refworld.org/docid/5716120a8.html>.

forces.⁵³⁵ Police officers and members of the military are reported to be responsible for serious human rights violations, including killings, rape and extortion of civilians.⁵³⁶ It therefore appears that the SFG will only be able to carry out her responsibilities if and when it has capacity to do so, and this is currently lacking. The SFG should be given ample time to develop capacity of these security agencies to promote a seamless transition and adaptation of returnees from exile.

4.2.2 Promote national development, security and humanitarian assistance programs

The TA proposes that order to enhance sustainable repatriation and reintegration of returnees the Tripartite Parties, and especially Somalia, are expected to advocate for the strengthening and expansion of national development, security and humanitarian assistance programs, focusing wherever possible on local community development in key areas of return.⁵³⁷ After repatriation, the TA envisages a scenario where the programmes that were being offered at the Dadaab camps in Kenya are duplicated and may be enhanced in Somalia. This works on the premise that the donor community will come in handy to finance and facilitate the implementation of such humanitarian programs. It is worth noting that apart from insecurity in Somalia, the reasons that some interviewees that are refugees cited in explaining their unwillingness to return was largely to do with lack of social services like education and health facilities in Somalia.

⁵³⁵United States Department of State, *2015 Country Reports on Human Rights Practices - Somalia*, 13 April 2016, <http://www.refworld.org/docid/5716120a8.html>. 'The Monitoring Group also received allegations against regional security forces outside the control of the SFG.

⁵³⁶ Lifos, *Security Situation in Somalia*.

⁵³⁷ Article 12(4) of the Tripartite Agreement

Developing social services and empowering communities to participate fully in the post-war reconstruction will require a lot of financial and technical support from donor states and agencies. As indicated, it is clear that refugees not only consider (in)security as a factor before determining to not(return), but the prospects of a dignified life in the future guaranteed by health facilities and education, among others. Indeed, one can argue that developing these social facilities prior to repatriation may be good enough 'pull factors' that will see refugees return voluntarily.

4.3 The role and responsibility of the UNHCR in repatriation

The Office of the United Nations High Commissioner (UNHCR) was established by the General Assembly⁵³⁸ as a subsidiary organization to be concerned with refugee protection. The main role of the UNHCR, as outlined in the UNHCR Statute, is to provide 'international protection' for refugees and 'to seek permanent solutions to the problem of refugees by assisting governments, in cooperation with NGOs and other international organizations, to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities'.⁵³⁹

⁵³⁸See Statute of the Office of the United Nations High Commissioner for Refugees of 1950, U.N. G.A. Res. 428 (V) (Dec. 14, 1950)[hereinafter the 'UNHCR Statute'] *available at* http://www.unhcr.ch/html/menu3/b/o_unhcr.htm.

⁵³⁹Chapter 1 of the UNHCR Statute; *see also* Guy S. Goodwin-Gill, *The Refugee in International Law* 7 Oxford Univ. Press, 1996.

Although the principal mandate of the UNHCR is to provide international protection, it can expand to in-country protection as well. This is particularly true when the UNHCR becomes involved in the voluntary repatriation of refugees or when it assists refugee groups, where there are also mixed populations or people who are in refugee-like conditions.⁵⁴⁰ Normally the traditional mandate of the UNHCR is limited to refugees as defined by the Convention and does not extend to internally-displaced persons or other displaced persons that do not fall within the definition of a refugee. However, the role of the UNHCR, in accordance with paragraph 9 of the Statute, may be expanded by the General Assembly and the Economic and Social Council (ECOSOC).⁵⁴¹ Currently the UNHCR is extensively involved in conflict-torn countries, providing assistance and protection, to the extent possible, to internally displaced persons (IDPs) and to other displaced persons.⁵⁴²

Generally, the UNHCR's involvement with the internally displaced has often been in the context of the voluntary repatriation of refugees, where return movements and

⁵⁴⁰Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. (Apr. 11) available at <http://www.icj-cij.org/docket/files/4/1835.pdf>; see also ECOSOC resolution 1705 (LIII), (27 July 1972).

⁵⁴¹In 1957, the General Assembly first authorized the High Commissioner to 'use its good offices' to assist people who did not fall within the Refugee Convention's refugee definition. U.N. G.A. Res. 1167 (XII), Chinese Refugees In Hong Kong (Nov. 26, 1957). With regards to internally displaced persons, the first reference to the expansion of the UNHCR's mandate came in 1972.

See U.N.G.A. Res. 2958 (XXVII), Assistance to Sudanese Refugees Returning from Abroad, (Dec. 12, 1972; see also Goodwin-Gill, *supra* note 8, at 11.

⁵⁴²IDPs are defined as 'persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed and internationally recognized state border.' Luke T. Lee, 'The Refugee Convention and Internally Displaced Persons', *International Journal of Refugee Law*, Vol.13, no.3, 2001, pp.363-366

rehabilitation/reintegration programs have included both returning refugees and displaced persons in circumstances where it was neither reasonable nor feasible to treat the two differently.⁵⁴³ After the late 1980s, however, the UNHCR has taken on different responsibilities -- it has become more active in countries of refugee origin by granting humanitarian aid, monitoring human rights violations and trying to prevent the flow of refugees.⁵⁴⁴ Today, the UNHCR's role has been expanded so that it covers both the victims of war and gross human rights violations, as well as people who have not crossed an international border. In this regard, one scholar has noted that the 'UNHCR's role has changed so much that it now officially provides assistance even to those who are not displaced.'⁵⁴⁵

A summary of the UNHCR's mandate for voluntary repatriation, as derived from the 1951 Convention, is as follows:

- (i) Verify the voluntary character of refugee repatriation;
- (ii) Promote the creation of conditions that is conducive to voluntary return in safety and with dignity;

⁵⁴³Geoff Gilbert, 'Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order', *International Journal of Refugee Law*, 1998, p.355 (citing UNHCR, UNHCR Strategy Towards 2000, para. 1 and 5 (1996)).

⁵⁴⁴See P. Kourula, 'The UNHCR Note on International Protection You Won't See', *International Journal of Refugee Law*, vol.9.no.2,1997,p,267

⁵⁴⁵M. Barutciski, 'A Critical View on UNHCR's Mandate Dilemmas', *International Journal of Refugee Law*, vol.14.no2, 2002.p.365-381.

- (iii) Promote the voluntary repatriation of refugees once conditions are conducive to return;
- (iv) Facilitate the voluntary return of refugees when it is taking place spontaneously, even if conditions are not conducive to return;
- (v) Organize, in cooperation with NGOs and other agencies, the transportation and reception of returnees, provided that such arrangements are necessary to protect their interests and well-being;
- (vi) Monitor the status of returnees in their country of origin and intervene on their behalf if necessary;
- (vii) Undertake activities in support of national legal and judicial capacity building to help states address causes of refugee movements;
- (viii) Raise funds from the donor community in order to assist governments by providing active support to repatriation and reintegration programmes;
- (ix) Act as a catalyst for medium and long-term rehabilitation assistance provided by NGOs, specialized development agencies and bilateral donors⁵⁴⁶.

In the case of Somali refugees in Kenya, legal local integration is not currently considered an option. This is because Kenya's policy towards Somali refugees has always been one of encampment with an expectation that refugees would eventually return to Somalia when conditions change or when such a move is inevitable. Third country resettlement is also

⁵⁴⁶1951 UN Convention Relating to the Status of refugees

out of reach to the majority of Somali refugees in Dadaab especially considering the estimates that indicate that less than 1%⁵⁴⁷ of all refugees globally benefit from this scheme that is often termed as 'rare solution to refugee crisis'⁵⁴⁸ The influx of refugees from Syria and other Middle Eastern countries to European countries is also straining any possibility of sustained resettlement programmes for Somali refugees, with many European countries adopting more restrictive policies towards refugees. This has been worsened by the rise of Islamic extremist groups who may have set their bases in the now refugee producing countries or by the perceptions of European public and media about this. A part from the burden associated with hosting refugees, many would-be refugee host countries now fear the infiltration of terror extremist elements among the fleeing refugees and, hence, prefer to enforce restrictive policies on the refugee entry points. President Trump of the USA, for instance, has made various attempts to restrict movement of refugees especially from the Middle East with his administration claiming 'The security and safety of the American people is our chief concern.'⁵⁴⁹ Some have termed his ban on refugees as a 'Muslim' ban as it targeted especially countries with Muslim majority namely Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen⁵⁵⁰.

⁵⁴⁷M. Bradley, *Refugee repatriation: Justice, responsibility and redress*, Cambridge, UK, Cambridge University Press, 2013, p.6.

⁵⁴⁸ M. Bradley, *Refugee repatriation: Justice, responsibility and redress*, Cambridge, UK, Cambridge University Press, 2013, p.6.

⁵⁴⁹L. Koran, 'Trump administration dramatically scales back refugee admissions', CNN, 27th September 2017. Available <https://edition.cnn.com/2017/09/27/politics/us-trump-refugee-admissions/index.html> [Accessed 10th February, 2018]

⁵⁵⁰ 'Trump's executive order: Who does travel ban affect?', BBC, 10th February, 2017. Available <http://www.bbc.com/news/world-us-canada-38781302> [Accessed 10th February, 2018]

In Europe, the refugee crisis was unprecedented with 1 million⁵⁵¹ refugees fleeing the Syrian conflict entering Europe in 2015. Apart from being perceived as an economic burden to Europe, these refugees are perceived as ‘rats and terrorists’⁵⁵² by sections of European population and media. Aware of the risks such thousands of refugee immigrants pose, Europe now is grappling with seeking long-term answers to refugee crises⁵⁵³.

In all these refugee crises, the UNHCR considers repatriation as the preferred durable solution and the one that is the most realistic for the largest⁵⁵⁴ number of refugees, like the current refugee crisis in Europe. Even though the UNHCR continues to promote the other two durable solutions, resettlement and local integration, they serve less refugees as durable solutions. This is because resettlement and integration depend on the goodwill of prospective host states and host states to take in refugees respectively. Because refugees are a political issue, most (to-be) host states avoid the complexities of hosting them in the long-term, partly for fear of backlash from its citizens. However, UNHCR’s preference for repatriation can only be partially explained by this limited impact of local integration and

⁵⁵¹‘Migrant crisis: One million enter Europe in 2015’, 22nd December, 2015. Available at <http://www.bbc.com/news/world-europe-35158769> [Accessed 10th February, 2018].

⁵⁵²D. Brown, ‘Offended by the Daily Mail’s cartoon of refugees and rats? Fine – but you don’t have a right to censor it’, *Independent*, 17th November, 2015. Available at <http://www.independent.co.uk/voices/offended-by-the-daily-mails-cartoon-of-refugees-and-rats-fine-but-you-don-t-have-a-right-to-censor-a6738356.html> [Accessed 10th February, 2018]

⁵⁵³S. Tisdall, ‘Divided Europe seeks a long-term answer to a refugee crisis that needs a solution now’, *The Guardian*, 23rd July, 2017. Available at <https://www.theguardian.com/world/2017/jul/22/divided-europe-refugee-crisis-italy-serbia-greece> [Accessed 10th February, 2018],

⁵⁵⁴United Nations High Commissioner for Refugees. *Global trends report 2012*, Geneva, Switzerland, Division of Programme Support and Management., 2013.p 17

resettlement. The literature is critical of the UNHCR, as host and donor state pressures, as well as self-interests, have served as motives for UNHCR's participation and promotion of repatriation. According to Takahashi, the 'UNHCR, in particular, has played a disappointing role, giving undue emphasis to repatriation as the goal to be achieved.'⁵⁵⁵ Consequently, this has at times averted focus from UNHCR's protection mandate. Because UNHCR depends on funding from various states to fund refugee operations, the UNHCR finds itself caught between the need to protect refugee interests and that of not antagonizing various states (donors). Since funding of UNHCR depends on the willingness of states to contribute, it must strive to balance the interests of various states and those of refugees. Refugee interests may, however, easily suffer as UNHCR is dependent on the state parties and not vice versa. In this arrangement, it is ultimately the refugees, whose voices are less heard.

The UNHCR declared the 1990s as 'the decade of voluntary repatriation', and not only adopted repatriation as the primary solution but also began to initiate returns rather than previously just supporting them.⁵⁵⁶ Although the UNHCR might assert that its more active role in promoting voluntary repatriation efforts was what refugees wanted, UNHCR's success began to be based on showing how many refugees had

⁵⁵⁵ S. Takahashi, 'The UNHCR handbook on voluntary repatriation: The emphasis of return over protection', *International Journal of Refugee Law*, vol.9, no.4, 1997, p.595

⁵⁵⁶K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013.

repatriated.⁵⁵⁷This implies that the UNHCR was likely getting pressure from the donors (mostly states) and who demanded to see results in the form of how many refugees had repatriated. It should be observed, nonetheless, that because of the overwhelming number of displaced persons, the UNHCR increasingly found itself under pressure to repatriate thousands of refugees to avoid its capacity being overstretched.

The UNHCR is by nature a 'state-centric' organization as it is an agency of the United Nations (UN), an international governmental organization (IGO) that is made up of member states. Thus, throughout UNHCR's history and until today, states have been the principal actors in the international refugee regime⁵⁵⁸.The UNHCR is not only impacted by states' policies, but it is 'totally dependent' on donor states to fund its operations.⁵⁵⁹As a result, donor states have significantly influenced the organization.⁵⁶⁰UNHCR's funding mechanism differs from that of the United Nation's, as member states are not required to provide assistance to the UNHCR. Therefore, there is no automatic allocation of funds for the organization, rendering it reliant on voluntary contributions.⁵⁶¹Consequently, without

⁵⁵⁷Betts, A. and G. Loescher, 'Refugees in international relations, In A. Betts, and G. Loescher (Eds.), *Refugees in international relations*, vol.25, no.4, 2012,pp.581-582.

K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013, p.5.

⁵⁵⁸G. Loescher, 'UNHCR and forced migration' In Fiddian-Qasmiyah, E., Loescher, G., Long, K., & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press, 2014, p.217.

⁵⁵⁹G. Loescher, 'The UNHCR and world politics: State interests vs. institutional autonomy', *International Migration Review*, vol. 35. no. 1, 2001, p. 34.

⁵⁶⁰ G. Loescher, 'UNHCR and forced migration', in Fiddian-Qasmiyah, E., Loescher, G., Long, K., & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* , Oxford, Oxford University Press, 2014,pp.219.

⁵⁶¹T. Krever, 'Mopping-up', UNHCR, neutrality and non-refoulement since the Cold War. *Chinese Journal of International Law*, vol.10 no.3, 2011, pp.587-608.

an autonomous and consistent source of funding, the UNHCR is constrained in its ability to respond to refugee crises and to fulfill its mandate of refugee protection.⁵⁶² Furthermore, host governments, as sovereign states, determine the extent to which the UNHCR can operate within their country. Kenya, thus, determines the extent UNHCR operates at the Dadaab refugee camps. They determine who to grant refugee status to and who to deny this status from. They determine the entry of refugees to the country at their borders. Indeed, the UNHCR operates according to the laws of Kenya regarding refugee management. Questions regarding the extent of the conformity of refugee law in Kenya to that of the international refugee law are debatable. Somali refugees therefore have to operate according to the dictates of the Kenyan government even though they are under the protection of UNHCR as Persons of Concern (POC). POC to UNHCR include refugees, returnees, stateless people, the internally displaced and asylum-seekers. In fact, Kenya as a sovereign state may choose when to cease refugee status by invoking the cessation clause. Refugees are at the mercy of the host state and enjoy the refugee status at the will of the host state. Consequently, UNHCR's activities and evolution have been defined and, at times, constrained by the interests of states within the global refugee regime⁵⁶³. Consequently,

In regards to the UNHCR, it is argued by many critics that the organization has never been able to act independently, as it is a creation of governments.

⁵⁶²G. Loescher, 'UNHCR and the erosion of refugee protection', *Forced Migration Review*, 10, 2001, p28.

⁵⁶³ G. Loescher, 'UNHCR and forced migration', in Fiddian-Qasmiyah, E., Loescher, G., Long, K., & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford, Oxford University Press, 2014, p.18

Donor governments exercise the greatest power over refugee policy and have become increasingly frustrated with the increasing cost of supporting the budget of the organization. These governments are therefore interested in seeking means of reducing their obligations, one such method is the promotion of repatriation as the appropriate solution. The returnee programs organized by the UNHCR are cheaper and much shorter in length compared to the assistance programs offered in the host countries⁵⁶⁴.

Ironically, the host countries which formerly set themselves up as 'human rights monitors' evidently have an interest in reducing the numbers of refugees within their borders.⁵⁶⁵ Because of the weaknesses of UNHCR, especially regarding the inability to restraint from the influence of donor states, scholars like Haycock have argued that 'the organization lacks the necessary freedom of action to genuinely represent the interests of refugees, especially when these interests do not coincide with those of the states supporting it'⁵⁶⁶.

Host and donor states' interests have been a significant factor in the preference for repatriation over other durable solutions. Repatriation is the preference of host states due to the fact that host states perceive refugees more negatively than positively, and for donor states, with one reason being that it is less expensive than care and maintenance

⁵⁶⁴A. Haycock, 'Voluntary Repatriation', *Undergraduate Transitional Justice Review*, vol.1, no.1, 2013, p. 20

⁵⁶⁵B. Harrel-Bond, 'Repatriation: Under what Conditions is it the most Desirable Solution for Refugees? An Agenda for Research', *African Studies Review* vol.32,no.1,1989,p 44.<http://www.jstor.org/stable/pdfplus/524493.pdf>

⁵⁶⁶A. Haycock, 'Voluntary Repatriation', *Undergraduate Transitional Justice Review*, vol.1, no.1, 2013, p. 20

programs⁵⁶⁷. Moreover, because of host and donor state pressure, there are times when the UNHCR has facilitated repatriation even when the conditions in countries of origin were not yet peaceful, and the organization has been heavily criticized for this⁵⁶⁸. In some cases, the UNHCR enforced involuntary repatriation programmes in order to show its relevance to states.⁵⁶⁹ The examples of Rohingya refugees in Myanmar and Rwandan refugees in Tanzania will be discussed in detail in this chapter (see 4.3.4.1 and 4.3.4.2 respectively) as classical examples of compromised returns.

In the case of Somali refugees, Article 26 of the TA provides that the role of UNHCR in voluntary repatriation is as follows:

- i. Verify and assure the free and voluntary nature of the decisions made by the refugees to repatriate, in keeping with its mandate and shall have access to the refugees so as to discharge these and other responsibilities as per this Agreement;
- ii. Facilitate the safe and dignified character of the repatriation by ensuring that it is carried out in accordance with national and International law;
- iii. Organize and facilitate in collaboration with the Parties, awareness raising activities, dissemination of relevant information with regard to the voluntary repatriation to Somalia and on family reunification procedures in and outside Somalia;

⁵⁶⁷L. Hammond, et al, *Cash and compassion: The role of Somali Diaspora in Relief, Development and Peacebuilding*, London, Chatham House, 2012. See also J. Crisp, 'Forced displacement in Africa: Dimensions, difficulties, and policy directions', *Refugee Survey Quarterly*, Vol.29, no.3, 2010, pp. 1-27

⁵⁶⁸A. Betts, G. Loescher and J. Milner, *UNHCR: The politics and practice of refugee protection into the 21st century* (2nd Ed.). New York, Routledge, 2012, p.51

S. Takahashi, 'The UNHCR handbook on voluntary repatriation: The emphasis of return over protection', *International Journal of Refugee Law*, vol.9, no.4, 1997, p.595.

⁵⁶⁹G. Loescher, 'UNHCR and the erosion of refugee protection', *Forced Migration Review*, 10, 2001, p.28.

- iv. Establish offices, deploy staff and carry out activities along the main return routes in Kenya and areas of return in Somalia to implement the repatriation in safety and dignity of the refugees and promote their reintegration;
- v. Ensure that the vulnerable group of refugees and returnees are protected and their fundamental rights are respected in accordance with applicable international and national legal standards;
- vi. Monitor the situation of all refugees in Kenya in cooperation with the Government of Kenya, supervise their continued enjoyment of asylum as provided for by national and international law;
- vii. Mobilize and allocate resources for the purpose of the implementation of this Agreement;
- viii. Assist and coordinate in collaboration with partners the ongoing protection and assistance programs, the voluntary repatriation and reintegration activities in Kenya and Somalia;
- ix. Verify and assure the progress of the reintegration process of returnees to Somalia in cooperation with the Government of the Federal Republic of Somalia and
- x. Have access to the returnees during the reintegration process in accordance with this Agreement.⁵⁷⁰.

⁵⁷⁰Article 26 of *Tripartite agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya*, 10th November 2013. Retrieved from <http://www.unhcr.org/528102b49.html> .[Accessed 29 June 2015].

4.3.1 The UNHCR as resource mobilizer

After signing the TA with Kenya and Somalia on 10 November 2013, the UNHCR embarked on a mission to promote ‘voluntary’ repatriation of Somali refugees from Dadaab, Kenya. This was followed by a call to the international community to provide funds to facilitate the repatriation. In January 2016, for instance, the UNHCR, through its representative to Kenya, Raouf Mazou, announced a planned repatriation of 50,000 Somali refugees in 2016 costing millions of dollars.⁵⁷¹ To achieve this, the UNHCR rallied many stakeholders to fund the repatriation exercise although the number was not achieved as the UNHCR latest report indicates that only 75000⁵⁷² refugees repatriated between 2014 and the end of 2017, an average of 20,000 repatriations per year. While it was not clear how much other partners would raise and spent on repatriation, the European Union was already committing 77 million Euros⁵⁷³ on humanitarian aid at the Horn of Africa in 2016.

After all, the Preamble to the 1951 UN Refugee Convention recognizes the need for international cooperation in order to achieve durable solutions. It states that ‘considering that the grant of asylum may place unduly heavy burdens on certain countries . . . a satisfactory solution of a problem . . . cannot therefore be achieved without international

⁵⁷¹ Edmund Blair, Reuters, (2016). “UN Agency eyes 50,000 Somalis returning from Kenyan camp”. *Reuters* Accessed at www.reuters.com/article/idINKCN0UZ2K6?irpc=932 on 22 January 2016.

⁵⁷² <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Voluntary-Repatriation-Analysis-15-December-2017.pdf> [Accessed 10th February, 2018]

⁵⁷³ Edmund Blair, Reuters, (2016). “UN Agency eyes 50,000 Somalis returning from Kenyan camp”. *Reuters* Accessed at www.reuters.com/article/idINKCN0UZ2K6?irpc=932 on 22 January 2016.

cooperation'.⁵⁷⁴Over time, UNHCR has increasingly faced funding shortages, partly as a result of the ever increasing no of refugees. The bid by Kenya to raise 20 billion Kenya shillings(200million US dollars) to aid in the repatriation of about 500, 000 Somali refugees was not realized even after Kenya pledged 1 billion⁵⁷⁵ Kenyan shillings(10 million US dollars) to the kitty. Kenya's support to UNHCR in raising funds for repatriation indicates that UNHCR by itself has no capacity to mobilize the funds it need for its programmes, hence cannot fully realize its mandate.

4.3.2 The UNHCR as custodian of refugee rights and dignity

Despite the pressure from the Government of Kenya, the UNHCR has remained steadfast in advocating for refugee rights and dignity. While avoiding contradiction with the Government of Kenya, and the politics surrounding repatriation of Somali refugees, the UN refugee agency has maintained that refugees should only be repatriated in a humane and dignified manner and only to safe and secure areas in Somalia. On May 9, 2016 via its website, the Geneva based UNHCR called on the Government of Kenya to 'reconsider its recent announcement that it intends to end the hosting of refugees.'⁵⁷⁶The UNHCR was reacting to the Ministry of Interior in Kenya that had on May 6, 2016 made the statement

⁵⁷⁴The 1951 Convention relating to the Status of Refugees, Preamble, para. 4.

⁵⁷⁵C. Ombati, 'Kenya to spend sh. 1 billion for immediate repatriation of refugees from Dadaab', 11th May, 2016, <https://www.standardmedia.co.ke/article/2000201464/kenya-to-spend-sh1-billion-for-immediate-repatriation-of-refugees-from-dadaab> [Accessed 10th February 2018]

⁵⁷⁶www.unhcr.org/news/latest/2016/5/5730b5f36/unhcr-appeals-kenya-decision-end-refugee-hosting.html[Accessed on 24th June, 2016]

that it would stop⁵⁷⁷ hosting refugees citing an economic, security and environmental burden of hosting thousands of Somali refugees. In the statement the UNHCR, observed that,

In light of this, and because of the potentially devastating consequences for hundreds of thousands of people that premature ending of refugee hosting would have, UNHCR is calling on the Government of Kenya to reconsider its decision and to avoid any action that might be at odds with its international obligations towards people needing sanctuary from danger and persecution.⁵⁷⁸

While visiting the Dadaab refugee camps in mid-June 2016, the UNHCR High Commissioner for Refugees Filippo Grande, reassured the Somali refugees that they will only be repatriated to areas in Somalia with some semblance of government and that the UNHCR will not be party to the hasty process of repatriating refugees. As a result only 33,213⁵⁷⁹ repatriated in 2016 despite pressure by the Government of Kenya.

4.3.3 Debate on threshold dynamics of what constitutes (in) voluntary repatriation

Although *voluntary* repatriation is not mentioned in the *1951 Refugee Convention* per se, the concept stems from the principle of *non-refoulement*, found in Article 33 of the *1951 Refugee Convention*, which stipulates that states must not 'expel or return a refugee in any

⁵⁷⁷ A. Laing, 'Kenya says years of hosting refugees 'have come to an end'', *The Telegraph*, 9th May, 2016, Available at <http://www.telegraph.co.uk/news/2016/05/09/kenya-says-years-of-hosting-refugees-have-come-to-an-end/>[Accessed 10th February, 2018] See also AFP, 'Kenya to stop hosting Somali refugees', *Daily Nation*, 7th May, 2016. [Accessed 10th February 2018]

⁵⁷⁸www.unhcr.org/news/latest/2016/5/5730b5f36/unhcr-appeals-kenya-decision-end-refugee-hosting.html[Accessed on 24th June, 2016]

⁵⁷⁹<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/10/Voluntary-Repatriation-Analysis-27-October-2017.pdf>[Accessed 10th February, 2018]

manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'⁵⁸⁰.The voluntariness of return is an important factor in the sustainability of return⁵⁸¹however in practice, the term 'voluntary' is used in order to validate premature and politically advantageous returns⁵⁸². Furthermore, if refugees are involuntarily returned to a country that is not yet secure, they are likely to become internally displaced⁵⁸³ or to flee once again, as was the case in the involuntary return of the Rohingya to Myanmar leading to a vicious recycle of refugees. This is where refugees return to home country only to flee again.

The concept and the practical application of the *voluntariness* of repatriation have been widely debated by scholars. The UNHCR's handbook on voluntary repatriation outlines that,

As a general rule, UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country⁵⁸⁴.

⁵⁸⁰Article 33 of the 1951 UN Convention on the Status of a Refugee

⁵⁸¹K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013, p.38

⁵⁸²K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013, p.1

⁵⁸³B. Rutinwa, 'The Tanzanian government's response to the Rwandan emergency', *Journal of Refugee Studies*, vol.9, no.3, 1996, p.301

⁵⁸⁴United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, Switzerland, UNHCR, 2.3

However, the literature is often critical of the UNHCR's participation in refugee movements. Although states play a key role in this process, the UNHCR is the lead agency that has the responsibility to ensure refugee protection, assess the voluntariness of repatriation, and to promote it once the conditions allow for refugees to return in safety and with dignity. The UNHCR acts as a facilitator in this process and works with other actors such as governments and NGOs.⁵⁸⁵ However, 'few issues have proved more controversial in practice for the organization than the UNHCR's involvement in repatriation operations.'⁵⁸⁶ Once repatriation was accepted and promoted as a key durable solution, a trend towards the participation of the UNHCR in involuntary repatriation movements occurred in the 1990s. The UNHCR developed new terms to classify certain repatriation movements, which in practice, constituted involuntary repatriation. The concept of 'safe return' was introduced in 1993, and 'imposed return' in 1996.⁵⁸⁷

The notion of 'safe return' focused on the safety of return rather than the voluntariness of repatriation. This initially arose when it was being debated in the international refugee regime as to whether it was the voluntary nature or the safety of return that complied with the principle of *non-refoulement*, since the principle of voluntary repatriation was only stipulated in the Statute of the UNHCR and not in the 1951 Refugee

⁵⁸⁵ United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, Switzerland, UNHCR, 1.6

⁵⁸⁶ K. Long, K. Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013, p.1

⁵⁸⁷ B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73.

Convention.⁵⁸⁸Therefore, it was argued that repatriation could be promoted if the conditions in the country of origin were deemed safe. The UNHCR also worked at this time to reformulate the understanding of repatriation, so that greater importance could be placed on the safety of the return, based on the UNHCR's assessment, rather than on refugees' decision to return home.⁵⁸⁹This occurred at time of an 'emerging new paradigm which emphasized quick solutions' to refugeehood⁵⁹⁰, and thus was favored by both the UNHCR and states as it balanced protecting refugees while also finding a solution.⁵⁹¹The notion of 'imposed return' signifies that refugees are forcibly returned to less than ideal conditions in their country of origin.⁵⁹²The UNHCR introduced imposed return when it acknowledged that involuntary repatriation was in fact occurring and that exceptions needed to be made to the standard of voluntary repatriation⁵⁹³. This was based on the idea that the standard of voluntary repatriation needed to be 'contextualized'⁵⁹⁴, when

⁵⁸⁸K. Long, K. *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013.

⁵⁸⁹K. Long, K. *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013.

B. Chimni, 'The meaning of words and the role of UNHCR in voluntary repatriation', *International Journal of Refugee Law*, vol.5, no.3, 1993, p. 454

⁵⁹⁰B. Chimni, 'The meaning of words and the role of UNHCR in voluntary repatriation', *International Journal of Refugee Law*, vol.5, no.3, 1993, p. 454 and

J. Hathaway, 'Why refugee law still matters', *Melbourne Journal of International Law*, vol.8, no.1, 2007, p.6

⁵⁹¹K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013, p.25

⁵⁹²B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, p.63.

⁵⁹³B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004.

⁵⁹⁴This is where refugee situations are handled on individual basis in the process of repatriation. Refugee dynamics are unique and the perceived in (voluntary) repatriation should be handled as such.

asylum was 'unsustainable'⁵⁹⁵, and refugees had no other solution than to repatriate when host countries were adamant on their return. The UNHCR vindicated its participation in accepting involuntary return in some cases, as the organization was faced with 'a limited number of options, none of which is fully consistent with the principles which the organization is mandated to uphold'⁵⁹⁶ However, rather than withdraw from an operation, it is argued that this would help safeguard the UNHCR's participation in returns, and thus relevance, as the UNHCR did not have to ensure that returns were voluntary.⁵⁹⁷

In a nutshell, the exceptions made to the standard of voluntary repatriation illustrate that the voluntary nature of repatriation is not always given priority in practice.

⁵⁹⁵K. Long, K. *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013, p.26

⁵⁹⁶ United Nations High Commissioner for Refugees. *The State of the World's Refugees: A Humanitarian Agenda*. New York, Oxford University Press, 1997, para.80

⁵⁹⁷K. Long, K. *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*. PDES/2013/14. Geneva, Switzerland, UNHCR Policy Development and Evaluation Service, 2013

4.3.4 Voluntary repatriation compromised

In the 1990s, the UNHCR began to participate in involuntary repatriation movements. At times, the UNHCR's interests were comparable to donor and host states' rather than those of refugees. Two prominent cases clearly exemplify the use of the UNHCR's notions of 'safe return' and 'imposed return'. The first was in 1994 with the return of the Rohingyas to Burma (now Myanmar) from Bangladesh and the second was the return of Rwandans from Tanzania in 1996.⁵⁹⁸ These two cases show how the UNHCR disregarded the principle of voluntary repatriation in order to rapidly achieve a solution.

4.3.4.1 Repatriation of Rohingya from Bangladesh to Myanmar in 1994: Example 1 of induced return

The first was in 1994 with the return of the Rohingyas to Burma (now Myanmar) from Bangladesh and the second was the return of Rwandans from Tanzania in 1996.⁵⁹⁹ In the first case, approximately 250,000 Rohingya fled from Myanmar to Bangladesh between 1991 and 1992, due to a repressive regime.⁶⁰⁰ However, from 1993 and 1997, approximately 236,000 refugees were repatriated to Myanmar⁶⁰¹ yet, both Myanmar and

⁵⁹⁸Betts, A. and G. Loescher and J. Milner, *UNHCR : The politics and practice of refugee protection into the 21st century* (2nd ed.). New York, Routledge, 2012,p.52

⁵⁹⁹A. Betts, G. Loescher and J. Milner, *UNHCR : The politics and practice of refugee protection into the 21st century* (2nd ed.). New York, Routledge, 2012,p.52

⁶⁰⁰ United Nations High Commissioner for Refugees, 'Bangladesh: Analysis of gaps in the protection of Rohingya refugees', May, 2007, p.8. Retrieved from <http://www.unhcr.org/protection/convention/46fa1af32/bangladesh-analysis-gaps-protection-rohingya-refugees-2007.html> [Accessed 10th February 2018]

⁶⁰¹United Nations High Commissioner for Refugees, 'Bangladesh: Analysis of gaps in the protection of Rohingya refugees', May,2007,p.12.Retrieved from <http://www.unhcr.org/protection/convention/46fa1af32/bangladesh-analysis-gaps-protection-rohingya-refugees-2007.html> [Accessed 10th February 2018]

Bangladesh have not acceded the 1951 *Refugee Convention* or the 1967 *Protocol*.⁶⁰² According to Médecins Sans Frontières (MSF), the Government of Bangladesh began to forcefully repatriate refugees shortly after their arrival, without UNHCR's participation or support⁶⁰³. Initially, the Government of Bangladesh prevented the UNHCR from accessing refugees, however, the UNHCR later signed a memorandum with Myanmar and Bangladesh in order to reinstate their presence in the camps 'in exchange for its involvement in the 'promotion' of voluntary repatriation to 'safe' conditions in Myanmar'⁶⁰⁴. Although a controversial decision, this allowed UNHCR to have access, albeit limited, to refugees who had returned and in 1994, UNHCR began the repatriation process.⁶⁰⁵ UNHCR was criticized for not being able to prevent human rights abuses from occurring in the refugee camps.⁶⁰⁶ According to Human Rights Watch, Rohingya were returned to a state where the cause of their flight had not been resolved and thus 'the cycle of exodus' did not end after refugees were returned⁶⁰⁷.

⁶⁰² United Nations High Commissioner for Refugees. *States parties to the 1951 convention relation to the status of refugees and the 1967 protocol*. Retrieved from <http://www.unhcr.org/3b73b0d63.html> [Accessed 10th February 2018]

⁶⁰³ Médecins Sans Frontières, *10 years for the Rohingya refugees in Bangladesh: Past, present and future, 2002*, P.5 Retrieved from <http://www.msf.fr/sites/www.msf.fr/files/2002-03-01-Wiggers.pdf> [Accessed 10th February 2018]

⁶⁰⁴ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*' PDES/2013/14. Geneva, UNHCR Policy Development and Evaluation Service, 2013, P.12

⁶⁰⁵ Médecins Sans Frontières, *10 years for the Rohingya refugees in Bangladesh: Past, present and future, 2002*, P.5 Retrieved from <http://www.msf.fr/sites/www.msf.fr/files/2002-03-01-Wiggers.pdf> [Accessed 10th February 2018]

⁶⁰⁶ Human Rights Watch, *The Rohingya Muslims: Ending a cycle of exodus?*, 1996, p.3 Retrieved from <http://www.hrw.org/reports/pdfs/b/burma/burma969.pdf> [Accessed 10th February 2018]

⁶⁰⁷ Human Rights Watch, *The Rohingya Muslims: Ending a cycle of exodus?*, 1996, p.3 Retrieved from <http://www.hrw.org/reports/pdfs/b/burma/burma969.pdf> [Accessed 10th February 2018]

Approximately 10,000 new asylum seekers fled to Bangladesh by the end of May 1996, and at the same time, the UNHCR was completing the repatriation operation of refugees who had fled as the result of the Burmese military in 1992 and 1993⁶⁰⁸. Until today, Rohingya in Myanmar face human rights abuses including discrimination, unjustified arrests, torture, and death while in custody.⁶⁰⁹ Moreover, from June 2012 to June 2014, UNHCR estimates that more than 86,000 people fled Myanmar, the majority being Rohingya.⁶¹⁰ In 2015, thousands of Rohingya continued to flee Myanmar by boat as the result of ongoing persecution. Indonesia, Malaysia and Thailand turned away boats carrying Rohingya, which garnered international attention. In turn, these countries announced they would no longer push back these boats on the condition that they were resettled or repatriated within a year⁶¹¹. The Rohingya refugee crisis has remained unresolved to the extent that it attracted the attention of Catholic church leader, Pope Francis who visited them and called that they be respected⁶¹². It is evident that

⁶⁰⁸Human Rights Watch, *The Rohingya Muslims: Ending a cycle of exodus?*, 1996, p.3 Retrieved from <http://www.hrw.org/reports/pdfs/b/burma/burma969.pdf> [Accessed 10th February 2018]

⁶⁰⁹N. Brinham, 'The conveniently forgotten human rights of the Rohingya' *Forced Migration Review*, FMR41, 2012, pp.1-56.

⁶¹⁰ V. Tan, 'As thousands continue to flee Myanmar, UNHCR concerned about growing reports of abuse' UNHCR, 10th June, 2014, Available <http://www.unhcr.org/news/latest/2014/6/5396ee3b9/thousands-continue-flee-myanmar-unhcr-concerned-growing-reports-abuse.html> [Accessed 10th February, 2018]

⁶¹¹C. Tran, C., 'South-East Asian migrant crisis: Who are the Rohingya fleeing Myanmar by boat? *ABC News*, 21st May 2015. Retrieved from <http://www.abc.net.au/news/2015-05-21/explainer-who-are-the-rohingya-fleeing-myanmar/6487130>

⁶¹²C. Stratford, 'Pope Francis meets Rohingya refugees', *Aljazeera*, 2nd December, 2017. Available <http://www.aljazeera.com/news/2017/12/pope-francis-meets-rohingya-refugees-171202090627694.html> [Accessed 10th February, 2018]

repatriation was not a durable solution for Rohingya refugees, who until today, continue to flee in search of refuge.

The case of the Rohingya refugees show that coerced or forced return do not work and may trigger a wave of conflict and suffering and results to a new cycle of refugees. Just like the Rohingya, Somali refugees in Kenya are facing mounting pressure to return when conditions at home have not substantially improved. The fact that UNHCR gives consent for return does not in itself suggest that the return is voluntary.

4.3.4.2 Return of Rwandan refugees from Tanzania in 1996: Example 2 of induced return

The second case of the return of Rwandan refugees from Tanzania in 1996 also raised questions as to UNHCR's participation in the involuntary return of refugees. The UNHCR and the Government of Tanzania released a statement on December 5th, 1996, that Rwandan refugees were expected to return home by the end of the month.⁶¹³ The UNHCR encouraged refugees to prepare to return and advocated that Rwanda was now safe⁶¹⁴. The UNHCR's participation in the return proved to be very controversial and received criticism from NGOs and human rights organizations⁶¹⁵. Although the return of Rwandans occurred at a tremulous time it is argued to have contributed to further

⁶¹³ Whitaker, B., *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002.

⁶¹⁴ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*' PDES/2013/14. Geneva, UNHCR Policy Development and Evaluation Service, 2013,P.12

⁶¹⁵S. Lauren, *Repatriation as a Controversial Concept: The Case of Somali Refugees in Kenya*. Research paper supervised by Professor Delphine Nakache, School of International Development and Global Studies, University of Ottawa, July 2015,p.21

guerrilla activity⁶¹⁶, the Rwandan government assured that the country was safe for return and promised the Tanzanian government that refugees would not be killed upon returning home.⁶¹⁷ Moreover, after a visit to Rwanda by Amnesty International in November 1996, the organization raised caution on the number of ongoing human rights abuses including arbitrary arrests, overcrowding in detention centers, and ‘disappearances’⁶¹⁸. Findings by the Human Rights Field Operation in Rwanda (HRFOR) discovered returnees faced a series of human rights abuses and were mistreated in detention centers and during interrogations.⁶¹⁹

The return of both Rwandan and Rohingya refugees highlights two of the most obvious examples of the UNHCR’s participation in involuntary repatriation movements in the 1990s. As previously outlined, it is important to respect the voluntary nature of return, as there are negative implications for refugees’ protection when they are forced to return. The failed repatriation of the Rohingya and Rwandan may have been contributed to by the fact that, ‘nearly all governments of the world are becoming increasingly restrictive toward refugees and are interpreting international refugee law as it suits them’.⁶²⁰ This in

⁶¹⁶ G. Stein, *Refugee repatriation, return, and refoulement during conflict*, 1997. Retrieved from http://pdf.usaid.gov/pdf_docs/Pnacd092.pdf [Accessed on 23 April 2017]

⁶¹⁷Whitaker, B., *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002, p.7

⁶¹⁸Amnesty International, ‘Rwanda: Human rights overlooked in mass repatriation’ Amnesty International, 14th January, 1997, p.1. Available at <https://www.amnesty.org/en/documents/afr47/002/1997/en/> [Accessed 10th February, 2018]

⁶¹⁹ United Nations High Commissioner for Refugees. *The State of the World’s Refugees: A Humanitarian Agenda*, New York, Oxford University Press.

⁶²⁰B. Harrell-Bond, ‘Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research’, *African Studies Review*, vol.32, no.1, 1989, p. 44

practice may mean that a refugee host state can insist that the circumstances that led to the refugee flight have since changed and hence justify voluntary repatriation.

Consequently, the 'UNHCR's concern to appear useful to donors in an increasingly competitive humanitarian marketplace – and in which other actors were not burdened by a mandate to protect as well as assist – played an evident part in the move to downgrade voluntariness as a corollary to repatriation.⁶²¹ Additionally, because the UNHCR is state-centric (a point that is discussed above) organisation, it has been hesitant to promote refugee representation in the repatriation process.⁶²² This is because, as discussed above, the UNHCR is keen not to upset the donors (mostly states) who support their programmes.

According to some UNHCR staff, it is a challenge to ensure the principle of voluntariness when states have a political interest in the return of refugees and other solutions are not viable. Thus, premature returns to countries, which are not yet stable or where a regime continues to persecute individuals, are inevitable.⁶²³ Finally, the UNHCR's attitude towards spontaneous returns has impacted the organization's decision to promote organized repatriation movements. A spontaneous return is when a refugee decides to

⁶²¹K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013,p.26

⁶²² K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013,p.18

⁶²³ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013,p7.

return to their country of origin by their own volition, without UNHCR support, as opposed to an organized return that is facilitated and assisted by the UNHCR. Long argues that the UNHCR has an 'ambiguous attitude to spontaneous returns'⁶²⁴, as this type of repatriation makes facilitating and monitoring more difficult for the agency. Spontaneous returns are more logistically complicated for the UNHCR due to issues such as the control of the financial aspect of reintegration and verifying that refugees are 'processed out'⁶²⁵ of the refugee system⁶²⁶. Therefore, when refugees begin to return spontaneously, the UNHCR has used this to justify facilitating repatriation, irrespective of the factors that caused refugees to return.

The examples of Rohingya and Rwandan refugees indicate that although UNHCR is expected to be a custodian of refugee welfare, it is not immune to pressures from state actors. Faced with no alternatives, the UNHCR has sometimes turned a blind eye on the voluntariness of repatriation for fear of further upsetting host states already burdened by refugees.

⁶²⁴ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013, p.17

⁶²⁵ Refugee clearance is processing out of refugees from refugee status after resettling/returning.

⁶²⁶ K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013, p.17

4.3.4.2 Conclusion

This chapter has mainly focused on the role of the governments of Kenya, Somalia and UNHCR as envisaged by the TA. As discussed above, however, the TA signed on 10th November 2013 has faced numerous challenges regarding its implementation. According to the TA, the government of Kenya should provide security for refugees while in Kenya, help supply logistics for return, and manage and control refugees during return. I also discussed the role of the government of Kenya in supporting what can be termed as induced return. The threat by the government of Kenya to close down Dadaab refugee camp has been cited as amounting to coercing refugees to return and denying them a free choice not to repatriate.

The TA tasks the government of Somalia with providing refugees with security upon return. It should also promote national development and create an environment for humanitarian assistance. The UNHCR on the other hand should mobilize resources to support the repatriation process. The TA expects the UNHCR to be the custodian of refugee rights during repatriation.

While the TA envisages a voluntary repatriation exercise, the Government of Kenya has been accused of coercing Somali refugees to return. In her defense, the Government of Kenya claim that Somalia is now 'safe' for return and accuses UNHCR of wanting Somali refugees to continue staying in Kenya even when conditions at home have improved.

SFG has opposed massive repatriation of Somali refugees preferring a staggered system so as to allow it welcome refugees at home in a safe and dignified manner.

Members of the TA do not seem to agree on the un(safety) of Somalia, they differ on how best to implement repatriation as discussed in this chapter. I argue that it is evident that although signatories of the TA agreed in principle about voluntary repatriation of Somali refugees, they have differed greatly about how the actual implementation of repatriation should be carried out.

The refugees, who are not directly represented in the TA, its representation by UNHCR notwithstanding, are left behind as conflicting interests of actors take center stage. The TA in theory seems to be far removed from practice and only refugees themselves understand this reality. Refugees interests as Persons of Concern to the UNHCR should be paramount and should supersede individual interest of members of the TA.

In sum, the UNHCR has adopted and promoted repatriation above other durable solutions for refugees, largely due to host state pressure and in order to remain an important actor in the international refugee regime by appeasing donor states. Even though the UNHCR is greatly constrained by states to act independently due to the structure of the organization's funding mechanism, to view the UNHCR as a passive actor, controlled by states, would not be a truly accurate representation of the organization. The UNHCR has shown agency and acted independently at different times

throughout its history.⁶²⁷With respect to durable solutions, the UNHCR often exerts what pressure it can in order to find solutions for refugees. This is observed in the recent case of Syrian refugees, where the UNHCR successfully pressed for states to increase their resettlement quotas.⁶²⁸This exemplifies that the UNHCR does have political weight, even if limited, to influence donor states. The UNHCR should continue to exert what influence it can in order to encourage donor governments to share the responsibility of refugees more equally. This could ease the burden on host states in the Global South and potentially be used as a leverage to negotiate with host states when they pressure for refugees to return. In relation to the UNHCR's contested and self-interested role in repatriation, it is important to recognize here that the organization is dealing with highly complex situations and its autonomy to act is often constrained by host states' policies and donor states' interests. Therefore, as we discuss further, even though the organization is supposed to remain non-political, as per the Statute⁶²⁹ of the UNHCR, this is difficult as refugee situations are inherently political and the organization therefore

⁶²⁷G. Loescher, 'The UNHCR and world politics: State interests vs. institutional autonomy', *International Migration Review*, vol. 35. No. 1, 2001, pp. 33-56.

⁶²⁸In 2017 UNHCR resettled 65,084, while 2016 recorded highest resettlements at 126, 291. As of May 2015, 87, 350 places were made available and 61,948 of these were pledged since 2013 (UNHCR, 2015, May 13). In Canada, for example, the Canadian government increased the number of Syrian refugees to be resettled from 1,300 places allocated in 2013, to an additional 10,000, announced in 2015 (UNHCR, 2015, May 13; Mas, 2015, January 7). This new commitment was in response to the UNHCR's global appeal for the resettlement of 100,000 Syrian refugees (Mas, 2015, January 7), and occurred after a visit from the UNHCR High Commissioner António Guterres in May of 2014, who urged Canada to increase its quota (UNHCR Canada, 2014).

⁶²⁹Statute of the office of UNHCR, United Nations General Assembly Resolution 428(v) of 14th December 1950

finds itself 'out of its depth and faced with security and political issues that it has neither the mandate nor the resources to deal with'⁶³⁰.

In the next chapter, chapter five, I explore the extent of Somali refugee involvement, inclusivity and participation in repatriation processes and other selected cases across the world. It will seek to explore the subject of repatriation from refugee voices that seem to be overshadowed by the structured representation through UNHCR.

⁶³⁰G. Loescher, 'UNHCR and the erosion of refugee protection', *Forced Migration Review*, no.10, pp28-30.

CHAPTER FIVE

REFUGEES IN DECISION MAKING: DO THEIR VOICES MATTER?

5.0 Introduction

The aim of this chapter is to evaluate challenges associated with the tripartite voluntary repatriation agreement of Somali refugees, even as the repatriation exercise is at its initial stages, with a view to examine the extent of refugee-centered initiatives, inclusivity and participation in the repatriation process. While a number of repatriations may have been successful and sustainable, many of the repatriations have had many challenges hence raising the question as to whether any intervention, especially regarding the role of refugees in repatriation, were taken into account in such repatriation processes. This chapter is premised on the fact that only refugee repatriations that are refugee driven and owned are going to be sustainable in the long run. The ways in which refugees are involved in the pre-repatriation negotiations, the actual repatriation exercise and the post-repatriation phase is crucial in ensuring that the actual causes of the forced flight are addressed. This is essential to avoid a scenario where returnees are to flee again in a perpetual cycle that recycles refugees.

In the last thirty years voluntary repatriation has increased in importance as a way to deal with the increasing flows of refugees in the world. In 1992 the United Nations High

Commissioner for Refugees (UNHCR), Sadako Ogata, declared a decade⁶³¹ of voluntary repatriation and there have been some major returns of refugees since then to Afghanistan, Cambodia, Iraq, Angola, Somalia, Ethiopia, Mozambique, South Africa and Rwanda. However, despite such progress, from 1986 to 1994 the total number of refugees globally increased from an estimated 10 million to 23 million⁶³². In Africa, by the end of 2016, there were an estimated 19.6 million forcibly displaced and stateless individuals, including 5.1 million refugees and 11.1 million internally displaced persons (IDP's).⁶³³ These estimates include only those who have crossed international borders and are eligible for refugee status. Despite the decade of repatriation campaigns by the UNHCR, refugee numbers have continued to increase. As at 2017, UNHCR situational update indicates that, 'The scale of organized or spontaneous repatriation movements which began or continued in 2017 mainly to Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Mali, Rwanda, Somalia and Sudan, did not match the scale of new displacement across borders'⁶³⁴. As a result, the number of refugees in Africa is estimated to have increased by at least half a million in the first semester of 2017⁶³⁵.

⁶³¹J. Crisp and K. Long, 'Safe and voluntary refugee repatriation: From principle to practice', *Journal on Migration and Human Security*, vol.4.no.3, 2016,p.144

⁶³²B. Stein, F.C. Cuny F.C. and P. Reed, *Refugee Repatriation during Conflict: a new conventional wisdom*, 1995, Papers from the CSSC conference in Addis Ababa, Ethiopia, October 1992, Centre for the Study of Societies in Crisis, Dallas, TX.

These estimates include only those who have crossed international borders and are eligible for refugee status.

⁶³³ Update Africa- Executive Committee of the High Commissioner's Programme, Standing Committee, 71st Meeting, 13th March, 2018. Available at <http://www.unhcr.org/5a9fdc2d7.pdf>[Accessed 13th April, 2018]

⁶³⁴Update Africa- Executive Committee of the High Commissioner's Programme, Standing Committee, 71st Meeting, 13th March, 2018. Available at <http://www.unhcr.org/5a9fdc2d7.pdf>[Accessed 13th April, 2018]

⁶³⁵ Update Africa- Executive Committee of the High Commissioner's Programme, Standing Committee, 71st Meeting, 13th March, 2018. Available at <http://www.unhcr.org/5a9fdc2d7.pdf>[Accessed 13th April, 2018]

New conflicts have replaced old, returning refugees have displaced new ones (especially in Rwanda) and old refugees have returned to exile (such as in Angola with the resumption of the war in 1992⁶³⁶. The increasing difficulties of dealing with such staggering numbers of refugees have increased the impetus of the search for durable solutions to their plight. In general, three solutions are seen as both desirable and durable: voluntary repatriation to the country of origin; permanent settlement in the country of first asylum (integration); and in a third country with permanent residence status⁶³⁷. None of these is easily achieved and voluntary repatriation has come to be seen by governments, international organizations and many academics as the optimum solution, both in terms of sustainability and feasibility⁶³⁸. While it is generally agreeable that repatriation is the best solution when dealing with large numbers of refugees; refugee involvement in repatriation process has been questioned. In some instances, decisions to repatriate had been arrived at despite the refugee protesting such decisions. It appears that the rights of refugee communities to make decisions have been assumed by the refugee 'elite experts' who, in international forums, have not always represented

⁶³⁶ A. Pereira, 'The neglected tragedy: The return to war in Angola', *The Journal of Modern African Studies*, vol.32.no 1, 1994,pp1-28

⁶³⁷UNHCR, 'Information on UNHCR Resettlement', Available at <http://www.unhcr.org/information-on-unhcr-resettlement.html>[Accessed on 13th April, 2018]

⁶³⁸J. Rogge, 'Repatriation of Refugees', in Allen, T and Morsink, S. (Eds.), *When Refugees go Home*, UNRISD, Geneva and James Currey, London, 1994.
United Nations High Commissioner for Refugees, *Voluntary Repatriation: Principles and Guidelines for Action*, Inter-office memo no. 5, 10/2/87, 1987.

the best interests of refugees. It is from this perspective that the chapter explores the actual participation of refugees in matters regarding resettlement in general and repatriation in particular.

For instance, the governments' of Kenya, Somalia and the UNHCR seem to agree that it is now time for voluntary repatriation of Somali refugees. However, as this study would find out in subsequent discussions, an overwhelming majority of Somali refugee interview participants, about 80%, still feel that Somalia is unsafe for return hence are unwilling to return. As it would emerge in this study, the decision to push for 'voluntary' repatriation of Somali refugees by the Government of Kenya, Somalia and the UNHCR may have just been a decision of few 'expert elites'. Indeed their decision to repatriate thousands of Somali refugees may be far removed from the position of a majority of Somali refugees in Dadaab, who think it is not yet time to repatriate because of the current unfavourable conditions in Somalia. In this case the UNHCR, which serves as the protection agency for refugees, may not have sufficiently represented the views of the majority of Somali refugees as a signatory to the Tripartite Agreement in 2013. In fact the UNHCR admitted that Somali refugees in Dadaab were repatriating to Somalia because of threats and pressure from Kenyan security officials.⁶³⁹ According to one UNHCR official in Dadaab, 'many those who filled in the repatriation forms have shown that they

⁶³⁹M. Hassan, 'UN: Somali refugees leaving Kenya due to threats, pressure', 25th August 2016. Available at <https://www.voanews.com/a/somali-refugees-leaving-kenya-due-to-threats-and-pressure-un-says/3480706.html>[Accessed 13th April 2018]

are returning because of threatening rhetoric by Kenyan regional security officials who recently visited the camp'⁶⁴⁰.

This mismatch between the perspectives of refugees and their representatives through the UNHCR suggests that refugee views may have been set aside in part or as a whole, when the decision to repatriate was arrived at and the TA signed in 2013. The premise here is that refugee participation and inclusion in decisions regarding repatriation will ultimately determine whether the repatriation will be sustainable or lead to recycled refugees-refugees who repatriate only to flee in search of asylum again. In the case of Somali refugees in Kenya, the repatriation exercise could only be feasible if individual refugees consider the decision to repatriate as being one which is refugee-centered and one meant to protect their interests. A refugee-centered decision is one that considers a majority refugee opinion as paramount in the repatriation process. As it stands, it is disputable whether the current repatriation push by the Government of Kenya is centered on the interests of refugees or anchored in Kenya's interests of securing the Kenya-Somali border.

⁶⁴⁰ M. Hassan, 'UN: Somali refugees leaving Kenya due to threats, pressure', 25th August 2016. Available at <https://www.voanews.com/a/somali-refugees-leaving-kenya-due-to-threats-and-pressure-un-says/3480706.html>[Accessed 13th April 2018]

5.1 I don't want to go: The 'unheard' voices of refugees in organized repatriations

While ideally the UNHCR is expected to protect the interests of refugees, the prevailing circumstances under which the refugee agency operates, makes its mandate difficult or sometimes impossible to carry out. This is because the pressure from various stakeholders may lead to decisions that are not consensual and that may not necessarily favour the refugees. One scholar for instance argues that:

...repatriation is often not a consensual concept because it frequently does not serve refugees for two principal reasons. First, host states, UNHCR, and states of origin, promote repatriation as the best solution for refugees due to political and self-interested motives. Second, repatriation movements are not always voluntary, even though *non-refoulement* is a core principle of the *1951 Refugee Convention* (UNHCR, 1951). Consequently, other 'durable' solutions are not being found for refugees due to a strong focus on repatriation as the most preferred solution⁶⁴¹.

The above argument by Stanley Lauren indicates that although tripartite agreements can be reached and implemented, it does not necessarily mean that there was consensus. This view is backed by the empirical findings of this dissertation as applied to Dadaab refugee camps comprising Hagadera, Ifo and Dagahaley.

Somali refugees seem to have been side stepped by elite decision makers who sealed their fate through TA regarding repatriation. Asked, for instance, whether they were aware of the tripartite agreement signed between Kenya, Somalia and the UNHCR on voluntary repatriation, many (11 of 15 respondents), 73.33% simply said 'no'. Describing their lack

⁶⁴¹ S. Lauren, *Repatriation as a Controversial Concept: The Case of Somali Refugees in Kenya*. Research paper supervised by Professor Delphine Nakache, School of International Development and Global Studies, University of Ottawa, July 2015, p.9

of knowledge of the TA, some could just say ‘no, I have never had of anything like that’. These finding reaffirms the findings of a study by MSF in the months of July and August 2016 that indicated that an ‘overwhelming’ number of refugees in Dadaab, 8 in every 10⁶⁴², said there was no security in Somalia and consequently would not return to Somalia. This report questioned the nature of repatriation of Somali refugees terming it ‘inhumane and irresponsible’. It appears the unwillingness of Somali refugees to repatriate, mainly for security reasons, stood out in the study to the extent that MSF titled their study report *Dadaab to Somalia: Pushed Back into Peril*. The fact that the report’s title uses the word ‘push’ is in itself an indication that the process was not really voluntary as it was not as a result of the ‘pull’ factors in Somalia. In what appears like calling for more support from the donor community to sustain refugees in Kenya, MSF proposes that ‘Funding from donor countries needs to be directed to providing sustained assistance in the country of refuge, not to supporting what will essentially be a forced return to a warzone’⁶⁴³. While many state and non-state actors⁶⁴⁴ have proposed the former, the Government of Kenya

⁶⁴² A report by MSF titled *Dadaab to Somalia: Pushed Back into Peril*. The study was carried out in Dadaab during the months of July and August 2016 sampled 838 respondents and was released in October 2016. The report coincided with a time when the Government of Kenya was rallying for the support of the international community in its bid to mobilize the resources for repatriation.

⁶⁴³ Kenya, Dadaab: Return of refugees to Somalia in current conditions ‘inhumane and irresponsible’, 13th October, 2016.

<http://www.msf.org/en/article/kenya-dadaab-return-refugees-somalia-current-conditions-inhumane-and-irresponsible>[Accessed 12th April 2018]

⁶⁴⁴They include Human Rights Groups like Amnesty International (AI), Human Rights Watch (HRW), Médecins Sans Frontières (MSF) among others. See <https://www.amnesty.org/en/latest/news/2017/12/somalia-refugees-pressured-to-leave-dadaab-return-to-insecurity-drought-and-hunger/> 21st December, 2017[Accessed 13th April, 2018]

has insisted on the latter. The UNHCR has maintained that there is no deadline attached to the Tripartite Agreement⁶⁴⁵.

The minority of refugees (27%) who were aware of the tripartite agreement negotiations expressed their opposition to the planned repatriation campaign. One refugee respondent acknowledged that he was aware of the tripartite agreement but, 'I opposed the agreement'. Another refugee laments that it is regrettable that the agreement was signed despite her 'campaigning against the agreement'. In another instance, the refugee respondent admits that he is aware of the tripartite agreement but 'Only got the news from the media and disseminated'. The responses therefore indicate that the tripartite agreement signed on the 10th of November 2013 was concluded with little input from the refugees from Dadaab. This is because a majority of the refugees (73%) were not aware of the existence of any such agreement. When prompted further on whether they were aware of the tripartite agreement, one, without much thought simply responded that 'No, I think this was done by leaders only'. Others opposed to the agreement argued that they were not aware of the agreement and that, 'Many protested after the approval' or that

⁶⁴⁵UN High Commissioner for Refugees (UNHCR), *Tripartite Agreement Between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees Living in Kenya*, 2013, 10 November 2013, <http://www.refworld.org/docid/5285e0294.html>[Accessed 10th May, 2017].

'Participation was very low'⁶⁴⁶. This empirical findings are supported by the Nation Television survey that concluded that a majority of refugees are unwilling to repatriate due to security concerns in Somalia⁶⁴⁷. The fact that a majority of the Somali refugees in the camps did not know of its existence or its terms partly explains why they were against the provisions of the tripartite agreement. The reference of insecurity in Somalia, as a reason behind reluctance to repatriate implies that refugees were not adequately consulted regarding their repatriation. It is therefore suffice to argue that refugee active participation and inclusiveness was not considered with the weight it deserved as the agreement was signed regardless of the sentiments of the dissenting majority.

The Cambridge dictionary defines participation as 'the fact that you take part or become involved in something'⁶⁴⁸. If as a majority refugees are not aware of the existence and or contents of the TA then refugee involvement must have been minimal, if at all. This in essence significantly reduces their influence on the decision as to whether to repatriate or not. Indeed political theorists claim that 'all individuals ought to have an appropriately equal opportunity to influence decision-making processes'.⁶⁴⁹ Can it be argued that Somali refugees in Dadaab were given an appropriately equal opportunity to determine the

⁶⁴⁶ These were interview responses in Dadaab camps between August 1 and 30th August 2016. This was at a time that the tripartite agreement was being implemented as refugee 'voluntarily' returned through the assistance of the Tripartite Parties.

⁶⁴⁷ www.rckkenya.org/v2/ntv-kenya-many-refugees--not-ready-to-return-to-somalia/

Accessed on 25th November 20116

⁶⁴⁸ <https://dictionary.cambridge.org/dictionary/english/participation> [Accessed 16th April, 2018]

⁶⁴⁹ S. Verba, N. Nie and J. Kim, *Participation and political equality: A seven-nation comparison*, Cambridge, Cambridge University Press, 1978.

repatriation process? The fact that the majority barely understands the provisions of the TA suggests that there was no such opportunity. One can argue that Somali refugees, just like other refugees elsewhere, may not have had an opportunity to be fully involved in decision making processes regarding repatriation. Even though the UNHCR is apolitical, it often finds itself amidst political players and faces pressures from the host state and the state of origin. For the purposes of this dissertation, I adopt the praxialist approach to refugee participation in decision making.

In such a case, this raises the questions of who owns the repatriation exercise and for whom is it being carried out? Should repatriation be a top-down process or a bottom-up one, or another model altogether? Unless the answers to these questions are sought, the repatriation process will be flawed and untenable. If the repatriation exercise takes place under the current many voices of dissent among the refugees, then Kenya is likely to have 'recycled' refugees in the future-a situation where returnees flee again to their country of asylum. This is bound to happen when conditions at home have not significantly improved to allow for safe and dignified return.

This therefore implies that although the state and non-state actors are busy mobilizing for resources for the repatriation exercise, many of the refugees (73%) were neither aware of the TA nor its implications. While the *voluntariness* of repatriation has been a key principle of refugee protection in theory, in practice, involuntary repatriation occurred

and was approved by UNHCR under certain circumstances in the 1990s⁶⁵⁰. This had negative implications for refugees as the principle of *non-refoulement* was compromised.⁶⁵¹The question is: does the failure of the UNHCR to actively engage the refugees in the process of repatriation suggest its predetermined decision to repatriate them? As the case studies, cited in chapter four of this dissertation, show regarding the involuntary repatriation of Rohingya from Bangladesh to Myanmar in 1994 and the return of Rwandan refugees from Tanzania in 1996, this is a worrying trend. It is evident that while in principle the refugee regime envisages repatriation as voluntary, this may not be the case in practice. UNHCR is not immune to pressures from host states who essentially determine who to grant asylum.

Repatriation, therefore, may take place even if a majority of the refugees feel unsafe to return home. The empirical finding in Dadaab confirms that the actual decision makers on refugee matters are other refugee actors and not really refugees. Asked on whether they believed Somalia was safe for return, a majority, 87% of the refugee thought that it was not safe. This in essence means that this group of refugees is not ready for repatriation. This study, that took place in August 2016, in the midst of a campaign to repatriate, shows that the process was carried out despite the feeling of a majority of the

⁶⁵⁰K. Long, *Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation*, PDES/2013/14, Geneva, UNHCR Policy Development and Evaluation Service, Oxford, Oxford University Press, 2013.

B. Chimni, 'From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems', *Refugee Survey Quarterly*, vol.23, no.1, 2004, pp.55-73.

⁶⁵¹Article 33 of the 1951 *Refugee Convention* on the Status of a Refugee.

refugees that felt the time to return had not yet to come. The table below is a summary of their thoughts.

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A1	No. More violence experienced in Somalia, no clear information about the situation.	Many think so, but no clear information on the situation at home.
B1	No. There are lots of war casualties. other safety issues are impunity, forced marriage.	This a general view held by UNHCR, Kenya etc...but nevertheless they seem to blindly promote repatriation.
C1	I am among those who came in 1991.I do not have a home to go back to.	This is a commonly held view, refugees have no place (home)to return to.
D1	No. prevailing insecurity.	Because they are homeless.
E1	Yes. After all food security in the camps is inadequate. Insecurity in camp is deteriorating too.	Many think Somalia could be an option to consider.
F1	No. Central government is weak and corrupt, no peace and stability.	Yes...because the Al Shabaab destabilize Somalia.
G1	No. Somalia is insecure.	Yeah...the recent attack and death of KDF in Somalia is testimony of situation.
H1	NO. Somalia government is weak...most parts of Somalia under militia control	Yes...there is a long way before peace is restored.
I1	No. Ongoing war in Somalia...not conducive for repatriation.	Yeah...some returnees were complaining for lack of shelter, food, clothing in Somalia.
J1	No...Somalia is full of gang militia...no place for non-combatants.	Yes...refugees are wondering 'why are we being taken back and there is no proper security?'
K1	No. Somalia government is unstable and cannot safeguard the rights of citizens.	Yes...think Somalia is full of moral decadence.
L1	No. There is war in the country.	Everybody knows what is going on in Somalia.
M1	No. Parts of the country still under terror groups.	Many think militia still controls many parts of Somalia.
N1	No. Fighting is going on in Somalia and is not safe for repatriation.	Everyone (UN, Kenya, refugees) is aware of the instability of Somalia.
O1	Yes. Many refugees go to Somalia to do business.	Many people have business contacts etc with Somalia.

The UNHCR in its global report of 2008 states its objective as 'to help States fulfill their obligation to protect asylum-seekers, refugees, stateless people, internally displaced persons (IDPs)and returnees'⁶⁵².Since UNHCR is a states' creation, it is only natural that it will most likely serve the interests of those states. Perhaps it is worth explaining, though briefly, why one needs to cast to doubt UNHCR as the refugee 'protection' agency. First,

⁶⁵²UNHCR, 'International Protection', 2008, p.1 Available at <http://www.unhcr.org/4a2d16e22.pdf> [Accessed 14th April, 2018]

the UNHCR is a creation of states, and hence mandated by states. This implies that states have a significant influence on UNHCR decisions. Secondly, there is a generally increasing donor fatigue⁶⁵³, especially regarding the billions of dollars required to sustain refugees in camps and to protect them in protracted situations. Responding on the Somali refugees' protracted situation, a senior UNHCR envoy lamented that there was 'growing hopelessness as their displacement drags on for decades and donors become fatigued'⁶⁵⁴.

Considering that states and non-state actors lobby for their interests, including on matters of repatriation, it is only fair and logical to involve the refugees themselves before such serious decisions are made. This should not in any way be construed to mean that the presence of refugees in the negotiation table will in any way be overlapping the functions and responsibilities of UNHCR as the UN refugee agency in charge of protecting the refugees. In other words, the fact that legislators make laws on behalf of the electorate does not mean that the electorate by themselves cannot push for particular legislation to be enacted.

Mark Malloch-Brown, as quoted by Harrell-Bond(1989), points out the glaring gaps in refugee decision making where the voices of refugees were neglected and, instead,

⁶⁵³UNHCR, 'Growing hopelessness' grips 'forgotten' Somali refugees, warns UNHCR', 9th January 2017. Available at <http://www.unhcr.org/afr/news/latest/2017/1/58738b174/growing-hopelessness-grips-forgotten-somali-refugees-warns-unhcr.html> [Accessed 14th April, 2018]

⁶⁵⁴ UNHCR, 'Growing hopelessness' grips 'forgotten' Somali refugees, warns UNHCR', 9th January 2017. Available at <http://www.unhcr.org/afr/news/latest/2017/1/58738b174/growing-hopelessness-grips-forgotten-somali-refugees-warns-unhcr.html> [Accessed 14th April, 2018]

decision-making was delegated to 'experts' to make decisions on their behalf. He argues that:

I would hope that experts will never again have the effrontery to sit down together to discuss refugees without refugees being present, but I doubt it. Refugee work remains, perhaps, the last bastion of the ultra-paternalistic approach to aid and development. It is hard to think of another area where the blinkered nonsense of the 'we know what's best for them' approach survives so unchallenged.⁶⁵⁵

Malloch-Brown's critique of the common view held by international organizations that seem not to consider the voice and position of the ordinary refugees especially on crucial matters like the decision to return. The refugee regime can only make good refugee decisions and policies if they get the facts from the real world (of refugees). After all '[I]f lawyers want to play a role in creating good laws, they must step out of their law libraries into the [real world], which is [one of] the [primary] source[s] of the information they need to build a truly legitimate formal legal system. [Then], reformers can get a sense of what they need to do to create a self-enforcing legal system'.⁶⁵⁶

There is adequate literature to suggest that even when refugees are not ready for repatriation, host governments and the UNHCR, often after signing Tripartite

⁶⁵⁵B. Harrell-Bond, 'Repatriation: Under what conditions is it the most desirable solution for refugees? An agenda for research', *African Studies Review*, vol.32, no.1, 1989, p. 41

⁶⁵⁶P. Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere*, London, Blackswan, 2001, p198.

Agreements, will nevertheless carry out such repatriations⁶⁵⁷. Indeed, during the repatriation decade, one UNHCR official bluntly put it: 'it is quite clear that a large proportion of the world's recent returnees have repatriated under some form of duress'.⁶⁵⁸ Such repatriations have, however, proved unsustainable over the long term and have created more complexities as a result of returnees fleeing the conflict zones again. In one such instance, Tanzania's Minister for Home Affairs, Shamsi V. Nahodha, complained at the May 2011 Tripartite Meeting⁶⁵⁹ that Burundian refugees did not appreciate Tanzania for hosting them after many Burundian refugees had declined to take up the offer to repatriate. According to him:

[the] United Republic of Tanzania has demonstrated a clear commitment in the dispensation of international obligation. It would seem logical therefore for Mtabila refugees to reciprocate this generosity of the host country by returning home. Instead, these refugees have defied all calls to return home and have become insensitive to the generosity accorded to them.⁶⁶⁰

⁶⁵⁷B. Chimni, 'From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problem', Working Paper no 2, 1999. See also UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, Oxford, Oxford University Press, 1997.

⁶⁵⁸ UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, Oxford, Oxford University Press, 1997, p. 147.

⁶⁵⁹https://reliefweb.int/sites/reliefweb.int/files/resources/full_report_79.pdf [Accessed 16th April, 2018] Opening Remarks Delivered by the Minister for Home Affairs Hon. Shamsi V. Nahodha, (MP) at the 15th Meeting of the Tripartite Commission on the Repatriation of Burundian Refugees from Tanzania, Dar es Salaam, 25th May 2011

⁶⁶⁰https://reliefweb.int/sites/reliefweb.int/files/resources/full_report_79.pdf Opening Remarks Delivered by the Minister for Home Affairs Hon. Shamsi V. Nahodha, (MP) at the 15th Meeting of the Tripartite Commission on the Repatriation of Burundian Refugees from Tanzania, Dar es Salaam, 25th May 2011, on file with IRRI.

The minister's reaction was as a result of frustration that the end of the civil war in Burundi has not resulted in the dutiful return of all refugees. The Minister's statement also reflects a broader regional expectation that the end of conflicts should lead to universal repatriation.

Refugees returning in such coerced circumstances are more likely to be victims of violence upon return. This not only increases the chance that the returnee will flee again, either to the previous country of asylum or to another, but also makes it difficult for refugees to cope, acclimatize and to assimilate in his or her home country upon return.

While the UNHCR has remained an active refugee protection agency, the organization seems to be overburdened by the protracted conflicts that have resulted in refugees spending decades in refugee camps in host states. Consequently, the UNHCR is of the opinion that long stays by refugees in the camps ends up eroding and undermining the very refugee life that such camps were meant to protect. This is because the aim of UNHCR in establishing refugee camps is to protect the dignity of the life of refugees in the short term. Protracted conflicts mean refugees overstay in camps yet camps have limitations and are not designed for long term stays. Camps are only meant to provide essential life services for refugees. According to the UNHCR:

If it is true that camps save lives in the emergency phase, it is also true that, as the years go by, they progressively waste these same lives. A refugee may be able to

receive assistance, but is prevented from enjoying those rights – for example, to freedom of movement, employment, and in some cases, education – that would enable him or her to become a productive member of a society⁶⁶¹.

It is such overstaying in the refugee camps that may have informed the position of the UNHCR to support repatriation efforts, even when the security in the country of origin is still questionable. After all not all refugees agree on whether to classify Somalia as ‘safe’ or ‘unsafe’ as this depends on several other factors such as the part of Somalia that is being referred to and whom is safe or unsafe. This is because refugees will most likely feel safe if they repatriate to areas inhabited by their clansmen and unsafe if they repatriated to areas occupied by other clans. This is because the civil war in homogenous Somalia is fought along clan lines. Consequently, clan mates feel safe when they settle together as opposed to being resettled on areas perceived as with others. Indeed repatriation today is only possible to areas inhabited by the repatriates’ own clans⁶⁶². There is however no consensus from one refugee to another, Government of Kenya, UNHCR and Somalia as to whether to pronounce Somalia as safe and hence to endorse the repatriation process in totality, or as unsafe and hence to reject the rationale of the repatriation exercise in its entirety. It is conceivable that such disparities in opinion may have informed the signing of the Tripartite Agreement on 10th November 2013 so as

⁶⁶¹UNHCR, Executive Committee of the High Commissioners Programme, Standing Committee 30th Meeting, EC/54/SC/CRP.14,p.3, 10 June 2004

⁶⁶²J.W. Olesen, *Report on Fact-Finding Mission to North East and North West Somalia (Somaliland)*, Danish Immigration Service, Copenhagen, 1996

J.W. Olesen, *Report on the Nordic Fact-finding Mission to Mogadishu, Somalia*, Udlændingestyrelsen/Statens Invandrerwerk, Copenhagen, 1998.

to allow individual refugees to determine whether to repatriate or not depending on their own informed choice.

There is no guarantee that even the UNHCR can genuinely represent refugee interests when dealing with states. This implies that refugees' feelings, thoughts and perspectives may not be seriously considered before rolling out repatriation programmes. While the decision to repatriate or otherwise has a direct impact on the lives of refugees, the significance of this has not earned refugees a voice at the decision making table. Refugee sentiments may not be effectively represented by UNHCR, a states' creation, that may not be willing to upset its masters. While refugees should have a veto power on matters of repatriation, this power seem to be the preserve of the country of origin and country of refuge with the UNHCR playing a ceremonial role. For instance, in the case of Burundian refugees, as cited by former Tanzanian Home Affairs minister Shamsi V. Nahodha, the Tanzanian government was contemplating invoking the cessation⁶⁶³ clause hence consequently terminating the refugee status of Burundians in Tanzania. This in turn made refugees illegal immigrants paving the way for forceful repatriation and or deportation.

⁶⁶³See article 1C of the 1951 UN Convention Relating to the Status of Refugees; and article I(4) of the OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa. The term cessation refers to the revocation or cancellation of refugee status provided for under Article 1(C) of the 1951 Refugee Convention. The cessation clause can apply following actions taken by a refugee (such as return) or as applicable to this group when an individual 'can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.' (UNCHR Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Refugee Convention Relating to the Status of Refugees (the 'Ceased Circumstances Clauses') UN doc no, HCR/GIP/03/03 10 February 2003.

There are a number of reasons cited by refugees as to why they were reluctant to return to their home country. Some refugees cited insecurity in Somalia as a result of clan militia and terror groups like Al Shabaab⁶⁶⁴. Some respondents also cited the weakness of the Somalia government and argued that it cannot guarantee security. Responding on the imminent repatriation, one Somali refugee at Ifo camp lamented 'why are we being taken back and there is no proper security in Somalia⁶⁶⁵? A majority of young adults, apart from security concerns, protested the lack of social services and opportunities in Somalia. In the words of one such refugee, 'some returnees were complaining for lack of shelter, food, clothing in Somalia'⁶⁶⁶. Until these and other reasons are addressed, refugees will always ignore calls from the 'experts' to repatriate and when forced to repatriate under duress, such repatriations will be unsustainable. For instance, studies have indicated that, 'Given the choice, nearly half of Somali refugees interviewed in camps would prefer to move to a third country, a third would return to Somalia and small numbers would integrate locally. Yet, if conditions were conducive in Somalia, more than half would consider returning.'⁶⁶⁷ Many refugees opine that guaranteed security in Somalia, availability of social services especially education and health and opportunities for livelihoods as factors they consider before return. It is the individual perception of

⁶⁶⁴ Ali, 23, Interview at Dagahaley refugee camp 24th November 2016.

⁶⁶⁵ Omar 35, Interview at Ifo refugee camp, 25th November 2016.

⁶⁶⁶ Abdullahi, 27, Interview at Ifo refugee camp, 25th November 2016

⁶⁶⁷ Catherine-Lune Grayson, Andre Epstein and Emily Coles , 'Durable Solutions Perspectives of Somali Refugees' 2013. The project was supported by the Sean Deverux Human Rights Organisation, the Somali Children Welfare and Rights Watch in Baidoa and the Gedo Social Development Organisation.

refugees concerning repatriation, resettlement in a third country and of local integration that ultimately determines their choice of options. Failure to capture refugee aspirations in the quest for a permanent solution to the refugee problem not only delays the solution but actually worsens the personal suffering of refugees. The international community that has to grapple with the refugee problem for longer will also be burdened for long as it provides various essential services to the refugees while in exile.

Returns that take place under pressure from host governments - particularly the 1996 return of Rwandan refugees hosted by Zaire (now the Democratic Republic of Congo, or DRC) and Tanzania - have raised fresh questions about the degree of voluntariness and the role of compulsion in 'imposed return'.⁶⁶⁸ Moreover, what may arguably have been premature repatriations to the former Yugoslav republics and Afghanistan in the early 2000s has renewed debate on sustainable reintegration and its relationship to post-conflict reconstruction. The pressure on refugees to repatriate seems to have intensified since the 1980's when many refugees tended to move from poor to richer countries, hence creating an impression that they were migrants fleeing poverty and seeking resettlement in wealthy nations.⁶⁶⁹ The main difference between an economic migrant and a political asylum seeker is that 'the economic migrant uses asylum channels to seek economic improvement. In contrast, the legitimate asylum seeker only migrates to flee politically

⁶⁶⁸G. Loescher, *The UNHCR and World Politics: A Perilous Path*, Oxford University Press, Oxford, 2001.

⁶⁶⁹B. S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems', *New Issues in Refugee Research*, Working Paper No. 2, UNHCR, Geneva, 1999.

inspired persecution'⁶⁷⁰. Additionally, the economic migrant is viewed as migrating out of personal preference and the potential for economic gain, rather than out of necessity inspired by persecution or life-threatening circumstance.⁶⁷¹ While there are a significant number of economic asylum seekers, the majorities are those fleeing conflict and or persecution and genuinely seek protection from host states. While the international refugee regime does not recognize economic migrants as refugees, some economic migrants are faced with imminent death and starvation if they do not flee. For instance, several Somalis entered Kenya as refugees fleeing from the famine⁶⁷² of 2011 that ravaged Somalia.

Refugees in Dadaab had diverse opinions concerning the voluntary repatriation that was being advocated for by UNHCR, Government of Kenya and Somalia. When asked what she thought about organized repatriation, Josephine, a young Sudanese refugee stated, 'For me, I think many Somali refugees are just opting to temporarily return to Somalia in order to benefit from the repatriation financial and material assistance from UNHCR only to return after a few weeks or months citing insecurity'⁶⁷³. Josephine claimed she knows a

⁶⁷⁰Dobe, Kuljeet, S. 'Asylum is the new immigration: The refugee as economic migrant'<http://www.spr-consilio.com/asylum.html> for an example of this debate

⁶⁷¹W. Adelson, 'Economic migrants as political asylum seekers in the United Kingdom: crafting the difference', *The Michigan Journal of Public Affairs*, Vol. 1, Summer, 2004, p.1

⁶⁷²The Guardian, 'Somalia has been through famine before-but this time is different' 12th August 2011. <https://www.theguardian.com/world/2011/aug/12/somalia-famine-refugee-kenya> [Accessed 17th April, 2018]

BBC News, 'Somalia famine 'killed 260,000 people' 2nd May, 2013. <http://www.bbc.com/news/world-africa-22380352> [Accessed 17th April, 2018]

⁶⁷³ Interview with Josephine Daniel, 19, a Sudanese refugee at Dagahaley refugee camp since 2001. 16th November, 2016, Dagahaley refugee camp, Dadaab.

number of refugees who took the offer only to return shortly thereafter. Josephine argued that she has had such several cases where Somali refugees repatriate only to be back in the camps in a few weeks or months time. Josephine would later call me informing me that they were successful in the resettlement interviews and were scheduled, together with rest of the family in Dadaab, to relocate to Australia - they departed in November 2016. Unlike in the camps, Josephine and her family could now live a life of freedom and hope abroad. It is this hope of resettlement in the developed world that has kept many refugees resilient in the camps and reluctant to take up repatriation or integration into the local host community.

Principally, refugees should not be driven to repatriate by inadequate or deteriorating security and living conditions in the refugee camps, but should return when they deem conditions conducive in their country of origin. This is however not always the case. Some 5,200 refugees returned to Somalia by their own means in March and April 2012, according to UNHCR's Somalia population movement tracking (PMT) system. It has been repeatedly noted that a large number of refugees repatriated from Kenya to Somalia in 1993-94 because of the insecurity and deteriorating conditions in the camps, and not because conditions were conducive in Somalia.⁶⁷⁴ Forced returns would be indefensible.

Likewise, refugees should not be driven to repatriate by inadequate or deteriorating

⁶⁷⁴ S. Collin, 'An Analysis of the Voluntariness of Refugee Repatriation in Africa', University of Manitoba, 1996, pp13-15

S. Waldron and A. Naima, 'Somali Refugees in the Horn of Africa', In *Studies on emergencies and disaster relief: Refugee Studies Programme*, University of Oxford, 199, pp89-97

security and living conditions in the refugee camps, but should return when they deem conditions conducive in their country of origin⁶⁷⁵.

Recent repatriation of Somali refugees from Dadaab following the signing of the TA in 2013 has raised questions of voluntariness in repatriation. The concept of the voluntariness of refugee repatriations and how refugees are proactively involved in the process of organized repatriations is debatable. In January 2016, for example, the UNHCR representative to Kenya, Raouf Mazou, while commenting on repatriation of Somali refugees in Kenya was quoted as saying 'We are trying to plan for a possible 50,000 people (returning) in 2016'.⁶⁷⁶ It is debatable as to whether 'we' in his statement above actually involves the refugees or the other stakeholders mainly UNHCR, Government of Kenya and Somalia. The possibility that refugees may not be directly involved in the process is high, especially considering that the previous targets of 2015 were not achieved because many refugees were uncomfortable with the circumstances in Somalia.⁶⁷⁷ Many Somali refugees who opted not to return cite security as a major worry, the lack of

⁶⁷⁵DRC, 'Durable solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return', <https://drc.ngo/media/1311894/durable-solutions-perspectives-of-somali-refugees-2013.pdf>

⁶⁷⁶ Reuter, *Daily Nation*, online accessed at mobile.nation.co.ke/news/UN-repatriate-Somalis-Dadaab/-/1950946/3043828/-/format/xhtml/-/sfq99qz/-/index.html on 22 January, 2016.

⁶⁷⁷ Reuter, *Daily Nation*, online accessed at mobile.nation.co.ke/news/UN-repatriate-Somalis-Dadaab/-/1950946/3043828/-/format/xhtml/-/sfq99qz/-/index.html on 22 January, 2016.

livelihoods and social services especially education and health⁶⁷⁸.Others also cited rights to own land as a major impediment to their return.⁶⁷⁹

Refugees' effective involvement in repatriation decision processes is eroded especially when this is delegated to refugee agencies alone as custodians of refugee welfare and interests. Consequently, it is not at all clear at which level of analysis refugees' actions are supposed to be voluntary; if an individual within a household is not willing to return but the whole household as a unit returns, is that repatriation wholly voluntary? The UNHCR upholds the 'voluntary and individual character of repatriation' at all times.⁶⁸⁰The individual and voluntary nature of repatriation is however challenged when some family members endorse it while others reject it. There is, as ever, a continuum between voluntary and involuntary repatriation; how much pressure can be exerted before repatriation becomes involuntary? In extreme cases, such as in the case Rwandan refugee camps in Kibumba, Zaire in 1996, the refugee camp was blockaded by Zaire soldiers in order to prompt returns.⁶⁸¹ Interestingly, one UNHCR official at the time had hoped that 'this will kick off more voluntary repatriations'.⁶⁸²The understanding of the

⁶⁷⁸Interview with Duale at Dagahaley camp, 16th November 2016

⁶⁷⁹ Interview with Maalim at Ifo camp, 17th November 2016

⁶⁸⁰United Nations High Commissioner for Refugees, *Voluntary Repatriation: Principles and Guidelines for Action*, Inter-office memo no. 5, 10/2/87, 1987.

United Nations High Commissioner for Refugees, *Conclusion No 40 (XXXVI) Voluntary Repatriation*, UNHCR, 1985, Executive Committee 36th Session.

⁶⁸¹O. Bakewell, 'Refugee repatriation in Africa: towards a theoretical framework?', Occasional Paper , 04/96, University of Bath, July 1996, p.11

⁶⁸²The Guardian, 14th February 1996

meaning of voluntary, as indicating some degree of choice on the part of refugees, can be undermined as it becomes a label for activities to make them more palatable⁶⁸³.

5.1.1. 'They' decided we must go: Voluntary repatriation as induced return

Because voluntary repatriation is often praised as the ultimate solution to refugee problem especially when dealing with masses of refugees, many actors in the refugee regime, prefer and support it. This is perceived as an indicator of success in the pursuit of permanent solution to refugee problem. The refugees, as a result, may find themselves isolated from the views of the refugee actors, the UNHCR, the states of origin and the host states. The views of the majority of refugees (non elites) are soon taken over by the minority state and non state actors (elites). Though the refugee actors are a minority, they are in charge of the decision making process regarding repatriation and any other decision affecting the refugees. The worrying trend is that available literature has shown that many top-down efforts to revive the central government in Somalia have been unsuccessful, partly due to the failure of the experts to consult the ordinary Somali people⁶⁸⁴.

⁶⁸³O. Bakewell, 'Refugee repatriation in Africa: towards a theoretical framework?', Occasional Paper , 04/96, University of Bath, July 1996, p.11.

For example, a UNHCR spokesperson was quoted as hoping that Rwandan refugees in Kibumba camp in Zaire would return voluntarily as conditions in the camp deteriorated as Zaire soldiers blockaded it (BBC Radio 4 News 1pm 13th February 1996) and another hoped 'this will kick off more voluntary repatriations' (The Guardian, 14th February 1996). This may be preferable to the soldiers opening fire but it is hard to see this as actually voluntary.

⁶⁸⁴K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building and the Politics of Coping' *International Security*, Vol. 31, No. 3 , Winter 2006/07, pp. 74-106.

While a repeated failure of top-down efforts to revive Somalia's central government must not obscure the significant success of governance-building efforts within some local Somali communities⁶⁸⁵, this must serve as a warning to the experts that a failure to involve Somalis in Somalia (and the diaspora) in the reconstruction efforts of Somalia may not produce sustainable results. Supporting and campaigning for return, especially among young refugees who were born in exile may be a difficult task, as they do not have any memories of their home country. In this case, Somalia seems like a strange foreign land to the young Somalis who have known no other place to call home except the Dadaab refugee camps. The situation is such that a Somali refugee born in Dadaab in 1991 is now 27 years old and possibly married with children or a graduate if they had an opportunity to study. This in essence means the refugee is rooted in exile and may be feeling more at home while in exile than in the country of origin. This was the case for many Liberian refugees who after spending many years in Ghana came to consider Liberia a 'strange place' and 'foreign country'.⁶⁸⁶The Liberian refugees, now returnees, just like the young Somali returnee counterparts were finding it difficult to adapt to the life in their original home country.

In the midst of the many voices advocating their support for voluntary repatriation, the real players in the repatriation process, the refugees, soon find themselves overwhelmed

⁶⁸⁵ Ken Menkhaus 'Governance without Government in Somalia: Spoilers, State Building and the Politics of Coping'. *International Security*, Vol. 31, No. 3, Winter 2006/07, p. 7

⁶⁸⁶ N. Omata, 'Repatriation is not for everyone: the life and livelihoods of former refugees in Liberia' *New Issues in Refugee Research*. Research Paper No. 213. School of Oriental and African Studies, University of London, 2011. p4.

by the interests of the refugee actors who demand that they should voluntarily return because it is now safe to do so. According to one refugee respondent, 'The Tripartite Agreement is full of individual interests not necessarily in favour of refugees.'⁶⁸⁷ While supporters of repatriation paint a picture of a potential and optimistic Somalia this is, however, followed by difficult and sometimes unbearable conditions that refugees are subjected to upon return. According to Hawo, 42, a refugee in Hagadera camp, Somalia is lawless. According to her, 'the information we hear about Somalia is two: you either die or you get rich'⁶⁸⁸.Corruption and impunity has made others rich as they oppress the weak. It is also reported that government control in some areas is weak, and it has a reputation for lawlessness, and insecurity and high levels of rape and other forms of sexual violence.⁶⁸⁹ Moreover, a Human Rights Watch report⁶⁹⁰ of 2017 cites sexual violence and other forms of violence meted on civilians as rampant in Somalia.

Perhaps the statement by one Liberian refugee may illustrate what it means for the interests of refugees to be overridden by the state and non-state actors in the refugee regime:

I think repatriation is not for everyone. At least, it didn't work for me at all. In Ghana, I was not worried about my daily life so I could somehow visualize my future in a positive way ... But in Liberia, I first have to secure

⁶⁸⁷ Interview at Dagahaley camp, Dadaab 26th August 2016.

⁶⁸⁸Amnesty International, 'No place like home', 2014, p.29

⁶⁸⁹UN Security Council, Report of the Secretary-General on Somalia, 3 September 2013, para 42; Report of the Secretary-General on Somalia, 31 January 2013, para. 12.

⁶⁹⁰Human Rights Watch, <https://www.hrw.org/world-report/2017/country-chapters/somalia>[Accessed 18th April 2018]

daily basics like food and shelter ... it is very hard for me to think about my future here.⁶⁹¹

With the globally shared view of Liberia's recovered stability after 2003, the UN refugee agency centralized its focus on residual refugees' repatriation to Liberia. Between 2004 and 2007, the UNHCR organized a large-scale repatriation promotion programme for residual Liberians in the sub-region and encouraged their return to their country of origin. However, many Liberian refugees had not yet become prepared to return to the precarious political and economic situation in Liberia and had chosen to remain in Ghana even with very little assistance.⁶⁹² . After some refugees remained in Ghana and later rejected the offer of local integration, the Government of Ghana through the Minister of the Interior requested all Liberians to go back to Liberia.⁶⁹³

Empirical findings on Somali refugees in Kenya seem to be similar to the situation of Liberian refugees in Ghana in the early 2000s. While the main refugee actors, the Government of Kenya, SFG and the UNHCR are busy mobilizing funds from the

⁶⁹¹ Female returnee to Liberia from Ghana. Under the repatriation pressure from the host Government (Ghana) and UNHCR, about 10,000 Liberian refugees at Buduburam refugee settlement (in Ghana) repatriated to Liberia between April 2008 and March 2009. For further details see N. Omata, N. (2011) Repatriation is not for everyone': the life and livelihoods of former refugees in Liberia. *New Issue in Refugee Research*, Research Paper No. 213. School of Oriental and African Studies, University of London.

⁶⁹²S. Agblorti, 'Refugee integration in Ghana: the host community's perspective', *UNHCR Working Paper* No. 203, 2011, p.5

⁶⁹³Government of Ghana, 'Press Statement by the Hon. Kwamena Bartels, MP, and Minister for the Interior, on the Demonstration by Liberian Refugees at the Buduburam refugee camp', Tuesday 11 March 2008. Available at: allafrica.com/stories/200804020536.html [Accessed 20 February 2016]

international community to support the eminent repatriation, the Somali refugees in Dadaab seem ignorant of the implication of such a fund drive. The response by one such refugee, Ali, when asked what he thought about repatriation under the TA was simply, 'No, I am not aware (of the TA).I think this was done by the leaders only. Ordinary refugees were not involved'. Prompted further on whether other refugees participated or were aware of the same, Ali's response is short and precise: 'I think they did not participate because they are unwilling to return'⁶⁹⁴. Despite this the Government of Kenya had insisted that Dadaab camp should close by 30th November 2016⁶⁹⁵ although it later extended the dead line by six months⁶⁹⁶and beyond that. A Constitutional Division of a High Court in Nairobi however ruled in February 2017 that it was illegal for the Government of Kenya to close the Dadaab camp. The judge ruled that,

A declaration be and is hereby issued decreeing that the directive by the 3rd and 4th respondents to forcefully repatriate refugees based at Dadaab refugee camp or anywhere in Kenya is a violation of article 2(5) and 2(6) of the constitution and Kenya's International legal obligation under the 1951 UN Convention Relating to the Status of Refugees and the 1969 Organization of Africa Unity Convention Governing the Specific Aspects of Refugees in Africa, hence the said directive is null and void⁶⁹⁷.

Since the ruling was issued, the Government of Kenya has not made further directions regarding the timelines for closure.

⁶⁹⁴ Interview with Ali, a refugee, 24, 16th November 2016

⁶⁹⁵www.standardmedia.co.ke/article/2000203740/dadaab-refugee-camp-to-be-closed-by-november-says-nkaissery

⁶⁹⁶www.standardmedia.co.ke/article/2000223661/kenya-postpones-closure-of-dadaab-refugee-camp-by-six-months

⁶⁹⁷Ruling by Justice John Mativo, Constitutional Petition no.227 of 2016, p.35 Available at <http://kituochasheria.or.ke/wp-content/uploads/2017/02/Dadaab-Closure-Judgment-1.pdf>[Accessed 19th April 2018]

The World Food Programme (WFP) would later warn that thousands of Somali refugees in Dadaab camps risk starvation as a result of what they termed as a severe funding shortage⁶⁹⁸. The WFP warned that ‘Without an urgent response from other donors, we will completely run out of food for more than 400,000 in Dadaab and Kakuma at the end of February’.⁶⁹⁹ While the WFP blamed no one for the funding shortage they are facing in Dadaab, one may argue that this may have been instigated by calls from the Government of Kenya to the international community to channel their financial resources to the repatriation process instead of continually funding refugees in the 25 year-old refugee camp, the Dadaab complex, that was facing imminent closure from the Government of Kenya over security concerns. A Human Rights Watch researcher at the time challenged UN and governments to ‘do more than merely extend its deadline, which would violate refugees’ rights if enforced’.⁷⁰⁰

Refugee input and opinion is very essential for a sustainable repatriation. Interviews among Somali refugees in Daadab, for instance, indicate that most Somali refugees will feel safer when living among his/her clansmen. Clanism therefore plays a major role in the general feeling of safety and belonging among the Somali refugees. According to one

⁶⁹⁸B. Moseti, ‘WFP halves food rations to 400000 refugees in Kenya. *Daily Nation* www.nation.co.ke/news/WFP-halves-food-rations-to-400000-refugees-in-Dadaab--Kakuma/1056-3476960-1123rs0z/

⁶⁹⁹B. Moseti, ‘WFP halves food rations to 400, 000 refugees in Kenya’. *Daily Nation* www.nation.co.ke/news/WFP-halves-food-rations-to-400000-refugees-in-Dadaab--Kakuma/1056-3476960-1123rs0z/

⁷⁰⁰K. Kelley, ‘UN: Be flexible on Dadaab deadline’, *Daily Nation* Friday 18, 2016.p11.

Abdalla, 'I feel safe when among my people (clan), clan is better than government'. According to him, he prefers to settle among his clan members even if that means settling in areas controlled by the Al Shabaab militia than to settle in areas perceived to be safe and under government control but inhabited by members of a different clan. Clanism is therefore a big issue and stakeholders ought to consider this even when planning for repatriation. The question is how can the refugee agency, UNHCR, consider such a concern by the refugees when they are hardly involved in genuine dialogue that is refugee centered? Who, between the refugees and the tripartite parties, actually understands the genesis of and the solution to the protracted conflict in Somalia? There is no doubt that Somali refugees better understand their predicament at home and as such should be given a platform to be part of the solutions. Interviews and interactions with refugees in Dadaab suggest that refugees trust their own friends and relatives regarding information about Somalia. While UNHCR may furnish refugees with information about Somalia, many are critical of this and would verify from their own sources.

Even though a negotiated Tripartite Agreement on voluntary repatriation was signed on the 10th November 2013 between Kenya, Somalia and the UNHCR, the refugees in their personal capacities are either unaware of such a document or were not involved, even if indirectly, in its inception and adoption. In many cases, the signatories of the Tripartite Agreement and the refugees seldom had a common opinion on when and how the

repatriation was to be carried out. In what could amount to exclusion of refugee sentiments on matters of repatriation, one respondent lamented that,

‘Somalia is currently not in a position to take care of itself, and so the decision to move the refugees back to Somalia only means exposing them to imminent danger. I am afraid to go back because there is no life and no hope there’⁷⁰¹

Despite such sentiments, the Government of Kenya insists that Somalia is relatively safe for return and that NGO’s are hindering the repatriation process because of their own interests-of working in Dadaab refugee camps and earning big salaries⁷⁰² among other benefits. The Government of Kenya argues that refugees could be more concerned with the lack of livelihood opportunities and basic services in Somalia and not necessarily only on the fear of their physical security. The MSF report may back the Government of Kenya claim as one refugee respondent observes that, ‘I have been a refugee in Dadaab for the last 24 years. I have had many opportunities; including having my children in school, free healthcare, maximum security’.⁷⁰³ From this refugee’s response, it appears the opportunities in Dadaab and the lack of them in Somalia is the main reason some refugees could be reluctant to return. The Government of Kenya has however argued that no matter how long refugees wish to stay in the camps the time of return will surely

⁷⁰¹ A report by MSF titled ‘Dadaab to Somalia: Pushed Back into Peril’. The study, carried out in Dadaab during the months of July and August 2016, sampled 838 respondents and was released in October 2016. The sentiments of the quote indicate that either the views of the refugees were not represented well when the decision to repatriate refugees was arrived at or such sentiments were ignored. The findings in this thesis too indicate that up to 80% of Somali refugees were not ready or unwilling to return citing insecurity in Somalia and the lack of basic services like health and education

⁷⁰² This was the response of Interior Ministry spokesperson while rejecting the MSF report that Somalia is unsafe for return and that more than 80% of Somalis are unwilling to return. www.nation.co.ke/news/Govt-refutes-MSF-report-on-Dadaab-refugees/1056-3416606-x8ppj1z/

⁷⁰³ A report by MSF titled ‘Dadaab to Somalia: Pushed Back into Peril’ October 2016.

come-that time is now, and the earlier the better for the refugees. While various state and non-state actors pull and push in opposite directions, one fact is for sure, there is little engagement with refugee communities on matters of repatriation. The elites, the tripartite parties, have taken over the process and the interests of the refugees are overshadowed by the powerful actors.

The *Handbook on Voluntary Repatriation* stresses the importance of the voluntary character of repatriation and defines it in relation to conditions in the country of origin (calling for an informed decision) and the situation in the country of asylum (permitting a free choice).⁷⁰⁴ The UNHCR therefore anticipates that there should be 'pull factors' in the country of origin and there should be no 'push factors' in the country of asylum. It is therefore crucial to analyze these criteria and their application in the context of return to Somalia to shed light on the way these principles as developed in the *Handbook*, are used in practice, and the meaning for refugees in relation to their decision-making process.

The UNHCR Handbook emphasizes the need to supply refugees with information about the circumstances in the country of origin in order to enable refugees to make informed decisions and, consequently, to exercise their freedom of choice as to whether to return or not. For illustration purposes, the case of Afghan refugees is highlighted in order to draw

⁷⁰⁴United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, UNHCR, 1996, 2.3

lessons for the current repatriation crises of Somali refugees in Kenya. In the Afghan case, the extent of 'informed decision' in order to facilitate the 'choice' to return or otherwise shall be briefly discussed as a precursor to the on-going repatriation process of Somali refugees from Kenya. The need for refugees to have objective information on the situation at home as a basis for deciding whether to return or not was seriously cast into doubt in the case of the repatriation of Afghan refugees from Iran and Pakistan. The case of the Afghan refugees helps us to understand the trends in organized repatriation with lots of lessons to derive in the case of Somali refugees.

In many cases it seems clear that refugees are keen to return to their homes as soon as possible but the fact that the majority make their own way, regardless of assistance offered by governments or international agencies, suggests that such policies have been developed with too little regard for the refugees' motivations (for example see discussion on Mozambique in Wilson and Nunes.⁷⁰⁵ In other cases, where there is little enthusiasm for repatriation, such as for many Eritreans in Sudan⁷⁰⁶, it seems the options for refugees are likely to be blocked until repatriation is the only path open. Ideally refugees should opt for either local integration or permanent resettlement in a third country. Studies have, however, indicated that refugees who are under pressure to repatriate are unlikely to

⁷⁰⁵K. Wilson and J. Nunes, 'Repatriation to Mozambique: Refugee initiative and agency planning in Milange District 1988-91', in Allen and Morsink (eds.), *When Refugees Go Home*, Geneva, UNISD, 1994, p.173

⁷⁰⁶J. Bascom, 'The Dynamics of Refugee Repatriation: the Case of Eritreans in Eastern Sudan', in Gould W.T.S. and Findlay A.M. (eds.), *Population Migration and the Changing World Order*, Sussex, UK, Wiley, 1994, pp.225-248

remain in their home countries. One such case is that of Burundian refugees who, after considerable pressure, left Tanzania for their home country, Burundi.

A small number of Burundian refugees and asylum seekers who fled into a second phase of exile, despite having been considered to be no longer in need of protection as refugees in Tanzania. As former refugees living in Tanzania's Mtabila refugee camp, they were forcibly returned to Burundi (or left in advance) at the end of 2012. Unable to find security in Burundi, a number of them fled once more, this time to Uganda's Nakivale refugee settlement in Isingiro district. Here, as asylum seekers in a new cycle of exile, they report that they are eking out a precarious living, without adequate access to humanitarian assistance and with little confidence that their claims for protection will be successful.⁷⁰⁷

As in the case of Burundians above, premature repatriation led to devastating effects not only to the asylum seeker but also to the whole process of a permanent solution to the refugee problem.

The language of repatriation (as a durable solution) suggests that when the refugees have returned there will be a time when they have resettled and their problems will be over: their history comes to an end. Yet, the durable solution appears to be to relieve the international community of a responsibility, rather than to permanently resolve the challenges faced by refugees. In fact studies⁷⁰⁸ have detailed the challenges awaiting

⁷⁰⁷ A report by International Refugee Rights Initiative (13th November 2013) titled 'From refugee to returnee to asylum seeker: Burundian refugees struggle to find protection in the Great Lakes Region'. The report was based on interviews conducted in Nakivale settlement in Uganda and discussions of the findings with the government of Uganda and UNHCR. Report available at <http://reliefweb.int/report/united-republic-tanzania/refugee-returnee-asylum-seeker-burundian-refugees-struggle-find>

⁷⁰⁸G. Kibreab, 'Citizenship Rights and Repatriation of Refugees', *International Migration Review*, New York, The Center for Migration Studies of New York Vol. 37, No. 1, 2003, pp.24-73.

refugees upon return. This points to the fact that repatriation may not work for all refugees, especially those who have much to lose by repatriation after many years in exile.⁷⁰⁹ Also, it is important to recognize that repatriation is a process, rather than an activity, which has no neat end.⁷¹⁰ The report of the 1992 symposium in Addis Ababa on the mass voluntary return of refugees said of the refugee repatriation over the Sudan/Uganda border, that:

‘to focus, in such a case, on a single movement of people, in one direction and at one particular point in time, would be to give a false, but comforting, impression that one is dealing with a simple and well circumscribed event rather than with a complex and untidy process’⁷¹¹

It is therefore evident that repatriation is not a mere movement of refugees to their country of origin. It is a complex process that must involve all interested parties who

K. Jacobsen, *The Economic Life of Refugees*. Bloomfield, CT, Kumarian Press, 2005, pp.9-10.

N. Omata, ‘Struggling to Find Durable Solutions: Liberian Refugees in Ghana’, *New Issues in Refugee Research*, Geneva, UNHCR Policy Development and Evaluation Service, Research Paper No.234, 2012, p.1

K. Long, *Home Alone? A Review of the Relationship between Repatriation, Mobility and Durable Solutions for Refugees*, Geneva, Policy development and evaluation service, UNHCR, 2010, p.27

⁷⁰⁹Repatriation might entail significant losses, notably in terms of livelihood, educational opportunities and access to basic services. This is worsened by many years in exile that make return and reintegration processes more difficult because of the need to adopt a new lifestyle altogether. For instance, many young educated adults at Dadaab camps expressed fear that their investment of many years in education may not count the moment they return as there are neither educational opportunities in Somalia nor what they termed as ‘meaningful employment opportunities’.

⁷¹⁰B. Stein, F.C. Cunyand P. Reed, *Refugee Repatriation during Conflict: a new conventional wisdom*, 1995, Papers from the CSSC conference in Addis Ababa, Ethiopia, October 1992, Centre for the Study of Societies in Crisis, Dallas, TX.

T. Ranger, ‘Studying Repatriation as Part of African Social History’, in Allen T. and Morsink H. (Eds), *When Refugees Go Home*, UNRISD, London, James Currey, 1994.

⁷¹¹UNRISD, *Refugees Returning Home*, Report of the Symposium for the Horn of Africa on social and economic aspects of mass voluntary return movements of refugees, Addis Ababa September 1992, UNRISD, Geneva, 1993, p.4.

must understand that for repatriation to be successful refugees must agree and be part of the repatriation process.

In this subtheme of induced returns, I have maintained that failure to fully involve refugees in the repatriation process simply compounds the problem as it increases the chances that returnees will flee again. I have also discussed what constitutes voluntary repatriation and argued that what may be termed as voluntary may actually be induced return. I have maintained that for return to be truly voluntary it must be devoid of 'push factors' from the country of asylum and be solely driven by 'pull factors' in the country of origin and the desire to freely return.

5.1.2 Voluntariness in practice: The case of Afghan and Rwandan returnees

Afghan refugees were voluntarily repatriated under the guidance of the UNHCR who, then, termed the sheer numbers of Afghans opting to return as "triumphs"⁷¹². It termed the repatriation programme as a 'remarkable operation' which provided for a 'solution to what had seemed an intractable refugee situation'.⁷¹³ This perhaps is a good example to illustrate the fact that many planned refugee repatriations do not consult ordinary

⁷¹²UNHCR 'Voluntary Repatriation to Afghanistan 2005' (online) *Data Management Unit*, Branch Office Islamabad: UNHCR. Available from: <<http://www.unhcr.org.pk/publications/Annual%20Report%202005.pdf>> [Accessed 15 February 2008]. See also: *repository.forcedmigration.org/pdf/?pid=fmo:5058* [Accessed 20/02/2018] United Nations High Commissioner for Refugees, 'Protracted refugee situations', *Refugee Survey Quarterly*, vol.24, no. 1, 2005, pp.150-161.

⁷¹³UNHCR, 'The State of the World's Refugees 2006 - Chapter 6 Rethinking durable solutions: Box 6.2 Afghanistan - a complex transition', p.144. Available at <https://reliefweb.int/report/afghanistan/state-worlds-refugees-2006-chapter-6-rethinking-durable-solutions-box-62> [Accessed 20 February, 2018]

refugees or merely consult 'ceremonially' while adhering to planned repatriation decisions. It is only after dissenting opinion by refugees starts emerging with often completely different perspective of the 'true' picture of circumstances at home that one realizes that genuine consultation was not made.

In the much praised case of the repatriation of Afghan refugees, however, a few months into the repatriation programme, increasing ambiguity set in regarding the reality of this success story in the field. The success story seemed short-lived because the realities in Afghanistan suggested that returnees faced harsh life conditions in a war-torn country. Given Afghanistan's history of more than 25 years of war and violence, the country was characterized by extreme levels of insecurity as well as economic, political and social instability. As a result, many refugees who returned to Afghanistan found it difficult to survive in their home areas and were having to consider returning to the country of asylum or becoming internally displaced.⁷¹⁴

Therefore, given the prevailing claims by the UNHCR that voluntary repatriation to Afghanistan was a success story despite the unsatisfactory reality of return, pertinent questions emerge about the practice of voluntary repatriation, like the one asked by Bialczyk below:

Would refugees voluntarily decide to return to such poor conditions? To what extent and in which ways are refugees involved as stakeholders in

⁷¹⁴D. Turton and P. Marsden, 'Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan', *Issues Paper Series*, Kabul, Afghanistan Research and Evaluation Unit (AREU), p.5. Available from: <http://www.areu.org.af/index.php?option=com_docman&task=doc_view&gid=330> [Accessed 29 January, 2016].

these processes, especially in the case of Afghanistan? Who ultimately decides about voluntary repatriation, refugees or other actors?⁷¹⁵

Bialczyk⁷¹⁶ as quoted above was able to interrogate facts on the ground that seems to challenge the view that the repatriation of Afghan refugee was a success story. The repatriation process of Somali refugee is work in progress. While the extent of the implication is yet to be fully experienced, preliminary findings indicate returnees could be experiencing difficulties similar to those of the Afghan returnees. The case of Rwandan refugees in Uganda being voluntarily repatriated to Rwanda and the later adoption of forceful repatriation in October 2007 and July 2010⁷¹⁷ indicates the use of various means to either coerce or persuade the refugees to repatriate. Some of the returns, conducted in line with tripartite agreements, have been characterised by the use of force, threats, deceit and coercion.⁷¹⁸ Despite these pressures, a number of Rwandan refugees have stayed put. In addition, new asylum seekers and former repatriates (recyclers) continue to be registered as new arrivals, having made their way back to Uganda.⁷¹⁹

⁷¹⁵A. Bialczyk, 'Voluntary Repatriation' and the case of Afghanistan: A Critical Examination'. *Working Paper Series*, Oxford University, Refugee Studies Centre, 2008, p 2

⁷¹⁶A. Bialczyk, 'Voluntary Repatriation' and the case of Afghanistan: A Critical Examination'. *Working Paper Series*, Oxford University, Refugee Studies Centre, 2008, p 2

⁷¹⁷C. Korooma, 'Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda', *Working Paper Series* No. 103, 2014, p.12

⁷¹⁸Human Rights Watch, *Tanzania/Uganda: Prevent Forced Return of Refugees*, 19 June 2009. Available at <http://www.hrw.org/en/news/2009/06/19/tanzaniauganda-prevent-forced-return-refugees> [accessed 12 January 2016].

⁷¹⁹Rwanda News Agency, 'One Million Rwandan Refugees Face Forced Repatriation from Uganda' 17th May, 2010, Available at <http://rnanews.com/regional/3372-over-1000000-rwandan-refugees-face-forced-repatriation-from-uganda> [Accessed 20th February, 2018] See also Avenir, A., *Over One Million Rwandan Refugees Face Forced Repatriation from Uganda*, 16 May 2010, available at:

The majority of these Rwandans have in common an unwillingness and/or reluctance to return to Rwanda despite campaigns conducted to encourage their repatriation. As explained previously, a myriad of factors for their reluctance have been categorised as either pertaining to conditions at home or conditions in exile, among which are social networks that have been found to play a crucial role in influencing their choice to return.⁷²⁰ Although Korooma attributes the reluctance of Rwandan refugees to return to several pull factors in Uganda, it is only reasonable for actors advocating for repatriation to ensure that there are enough pull factors in the home country too.

As noted by one Ugandan official, since the repatriation process began in 2003, the number of Rwandan refugees in the settlements has continued to fall – from about 25,000 to less than 9,000 now. This drop is not due to repatriation – the majorities have left to settle alongside their supportive personal networks in Uganda’s communities as a coping mechanism and as a strategy to avoid going home.⁷²¹ The sense of belonging often associated with home ceases to apply in this case as refugees avoid return. Consequently, refugees frown upon the idea of home and seek to disassociate themselves from their origin. Regardless of the means adopted to make the refugee return, such endeavours may not succeed in the long run as refugees are likely to flee again.

<http://www.afriqueavenir.org/en/2010/05/16/over-one-million-rwandan-refugees-face-forced-repatriation-from-uganda/> [accessed 21 March 2011].

⁷²⁰C. Korooma, ‘Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda’, *Working Paper Series* No. 103, 2014, p.12

⁷²¹C. Korooma, ‘Reluctant to return? The primacy of social networks in the repatriation of Rwandan refugees in Uganda’, *Working Paper Series* No. 103, 2014, p. 13

Perhaps the involuntary repatriation of Rwandan refugees by Tanzania in 1996 is one classical example where refugee concerns and requests were ignored under the refugee protection agency, the UNHCR. On December 5, 1996, the Tanzanian government and the UNHCR issued a joint statement that read, in part, that 'all Rwandese refugees in Tanzania are expected to return home by 31 December 1996.'⁷²² Despite the involuntary nature of such statement, the UNHCR was there to cement the Tanzanian government's directive:

That same day, UNHCR distributed information sheets to refugees about the repatriation exercise, including the immediate suspension of economic and agricultural activities in the camps. The camps had been home to more than half a million Rwandan refugees since 1994, when they fled civil war and an advancing rebel army at home.⁷²³

Even though Tanzania was a haven of peace in a troubled region, by 1996, it appears their patience⁷²⁴ in hosting refugees was waning. Consequently, the government of Tanzania could no longer pay much attention to the means by which the repatriation was carried out. Upon receiving the repatriation announcement, many refugees wanted extra time to see how the integration of returnees from Zaire would unfold within Rwanda.⁷²⁵ Several wrote a letter to Tanzanian President Benjamin Mkapa requesting him to reconsider the

⁷²²The repatriation exercise was actually announced several days earlier by senior government officials and UNHCR representatives in Karagwe District, which was host to more than 100,000 Rwandan refugees.

⁷²³B. Whitaker, *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002, p.1

⁷²⁴B. Whitaker, *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002, p.1

⁷²⁵In October and November 1996, a series of attacks on refugee camps in eastern Zaire forced roughly 600,000 Rwandans to return to their home country.

December 31 deadline. As the government's position was firm, Rwandans sought other means to avoid repatriation. On the evening of December 6,⁷²⁶ refugees started fleeing camps in Karagwe district. Nearly 10,000 refugees hiked toward Uganda and Kenya, where they hoped to receive asylum. When questioned about their decision to flee, many said, 'Death is death'⁷²⁷ and that they would rather face the possibility of death in Tanzania than what they perceived to be certain death upon return to Rwanda.

This involuntary repatriation took place with the UNHCR's knowledge and approval. In fact, during the repatriation exercise, the UNHCR provided both financial and logistical assistance to the Tanzanian government. It gave the Ministry of Home Affairs more than \$1.5 million for extra equipment and personnel expenses associated with the operation.⁷²⁸ Although the perceptions by refugees that they would face imminent death upon return to Rwanda never really happened, there was still need to consider and even try to address their fears. The fact that those who returned did not face imminent death does not in essence mean their fears were unfounded.

Organized repatriations in the frameworks of Tripartite Agreements therefore do not at all guarantee that the exercise will be voluntary. The Tripartite Agreement between

⁷²⁶Democracy in Africa, 'Closing the camps: Kenya's déjà-vu politics', 16th May, 2016. Available at <http://democracyinafrica.org/closing-the-camps-kenyas-deja-vu-politics/> [Accessed 19th April, 2018]

The fact that December 6 was a Friday is important, because most NGOs did not send staff to the camps on Saturdays. Thus, the mass exodus from the camps was not discovered by aid workers until Sunday morning, when Tanzanian police began to make frantic announcements over the communications radio.

⁷²⁷B. Whitaker, *Changing priorities in refugee protection: The Rwandan repatriation from Tanzania*, Washington, DC, Department of Political Science George Washington University, Working Paper No.53, 2002, p.1

⁷²⁸The *Daily Mail*, November 13, 1998

Kenya, Somalia and the UNHCR for the repatriation of Somali refugees from Dadaab camps in Kenya may not be any different from the experience of Rwandan refugees in Tanzania in 1996. The question that one needs to ask then is what actually constitutes in (voluntary) repatriation in the case of organized repatriation? Does the support for repatriation by refugee stakeholders and a few refugees legitimize repatriation, hence making it voluntary?

5.1.2.1 'Informed decision'

Information campaigns have become standard in voluntary UNHCR led repatriation programmes, as a crucial prerequisite 'to help insure a free and informed choice with regard to return'⁷²⁹. In the case of repatriation to Afghanistan, the UNHCR and its partners disseminated information on the situation in Afghanistan and the repatriation process through a mass information campaign using the BBC, Afghan radio and TV, local newspapers, the UNHCR website, and registration and verification centres in Pakistan and Iran. Most of the UNHCR reports on the repatriation programme to Afghanistan mentioned the existence and practice of this information campaign to emphasize compliance with the requirements for voluntariness⁷³⁰.

According to a UNHCR survey among returnees in April and May 2004, 81 percent of the respondents had received the UNHCR information on the voluntary repatriation

⁷²⁹K. Lumpp, S. Shimosawa, and P. Stromberg, 'Voluntary Repatriation to Afghanistan: Key Features', *Refugee Survey Quarterly*, vol.23, no.3, 2004, p.158

⁷³⁰K. Lumpp, Shimosawa, S. and Stromberg, P., 'Voluntary Repatriation to Afghanistan: Key Features', *Refugee Survey Quarterly*, vol.23, no.3, 2004, p.158-159

V. Chetail, 'Voluntary Repatriation in Public International Law: Concepts and Contents' *Refugee Survey Quarterly* vol. 23, no. 3, pp. 1-32.

programme and 55 percent stated that their decision to return to Afghanistan was influenced by information⁷³¹ provided by the UNHCR. This is seen as a success by UNHCR in terms of compliance with standards set out in the *Handbook on Voluntary Repatriation* and in terms of ensuring voluntary and informed decision making on the part of refugees. Despite the relatively clear guidelines spelt out in the *Handbook* in relation to information provided, certain problems arise given the UNHCR's powerful role in influencing the refugees' decision making process.⁷³²The problem is that these information campaigns take place in 'a climate in which information is open to manipulation - whether consciously or unconsciously - by agencies and governments whose interest it is to talk up return⁷³³...' As a result, this information can over-emphasize the positive and downplay negative aspects of the situation in the country of origin, delivering inaccurate and distorted information. In the case of Afghan refugees, Bialczyk asserts that:

Overall, it appears that the information campaign provides information in a selective, incomplete and patchy manner. Realistic information on security issues as well as the overall negative socio-economic and political situation has not been presented in these return information updates. Rather, the information campaign provides a sense of opportunity for refugees upon return.⁷³⁴

⁷³¹cited in Lumpp *et al.* 2004, p. 158.

⁷³²M. Walsh et al, 'Repatriation from the European Union to Bosnia-Herzegovina: the Role of Information', in Black, R. and Koser, K. (eds.), *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*, New York, Oxford, Berghahn Books, 1999, p.115.

⁷³³M. Walsh et al, 'Repatriation from the European Union to Bosnia-Herzegovina: the Role of Information', in Black, R. and Koser, K. (eds.), *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*, New York, Oxford, Berghahn Books, 1999, p.122

⁷³⁴A. Bialczyk, "'Voluntary Repatriation" and the case of Afghanistan: A Critical Examination'. *Working Paper Series*, Oxford University, Refugee Studies Centre, 2008, p 19

Consequently, many refugees, upon return found the situation on the ground different with one returnee lamenting 'We wish now we hadn't returned; if we had known the real situation we wouldn't have come back'⁷³⁵. An analysis of the role and content of the UNHCR's information campaign (undertaken to ensure 'true' voluntariness) suggests that many Afghan refugees did not have access to accurate information when they voluntarily decided to return. Amnesty International pointed out that 'returnees feel deceived by reports, coming from host countries and UNHCR that they could return to Afghanistan in safety and dignity'⁷³⁶. Until 2018, Afghan returnees continued to face difficult post-war economic and political circumstances in Afghanistan. Persistent insecurity and intensified conflict continue to cause large-scale suffering and displacement of people throughout Afghanistan and into the neighbouring region.⁷³⁷ The influx of the returnees has strained the capacity of existing services and caused concerns about their ability to re-integrate and establish decent living conditions.⁷³⁸

⁷³⁵ 'Afghanistan out of sight, out of mind: The fate of the Afghan returnees, 23rd June, 2003, Available at <http://www.arnehansen.net/030623Amnesty-rapport%20imod%20deportation.htm> [Accessed 20th February, 2018] cited in Amnesty International, 2003, p. 1

⁷³⁶ <https://www.coursehero.com/file/p4eve08/returnees-feel-deceived-by-reports-coming-from-host-countries-and-UNHCR-that/> [Accessed 20 February, 2018]

⁷³⁷ Relief Web, 'ECHO fact sheet-Afghanistan-March 2018', 21st March 2018. Available at <https://reliefweb.int/report/afghanistan/echo-factsheet-afghanistan-march-2018> [Accessed 19th April 2018]

⁷³⁸ Relief Web, 'ECHO fact sheet-Afghanistan-March 2018', 21st March 2018. Available at <https://reliefweb.int/report/afghanistan/echo-factsheet-afghanistan-march-2018> [Accessed 19th April 2018]

While it was incumbent upon the Afghan refugees to exercise their freedom to choose to return or not, it is inconceivable that they would have chosen to return with full knowledge of what awaited them at home. This therefore implies that information received from the UNHCR was persuasive to the extent that it contemplated that return in safety and dignity was possible. In the case of Somali refugees in Kenya, the campaign for voluntary repatriation is steered by the Government of Kenya with the UNHCR insisting that return, regardless, must be voluntary and that it must be done in safety and dignity. The actual security situation in Somalia remains volatile. The latest United Nations Security Council observes that the, 'overall security situation remained volatile across Somalia, including in Mogadishu, despite the operationalisation of the Mogadishu stabilization force and strengthened security measures'⁷³⁹.

Acknowledging that reliable information about the true condition at home is crucial before any repatriation process is promoted and implemented, UNHCR has set up a Return Intention Registration at the Integrated Return Help Desks⁷⁴⁰ in Dadaab to furnish refugees with such information. Somali refugees have difficulty in obtaining accurate information as to the true situation in south and central Somalia. It is not at all clear whether it is possible for the UNHCR to guarantee that returns can take place in safety and dignity.

⁷³⁹ United Nations Security Council, Report of the Secretary-General on Somalia S/2017/1109 ,p.2 26th December 2017.

⁷⁴⁰ UNHCR Operational update-Dadaab, Kenya, 16-28 February, 2018', Available at <https://reliefweb.int/report/kenya/unhcr-operational-update-dadaab-kenya-16-28-february-2018>[Accessed 19th April, 2018]

Take the case of Isaac for instance:

Talk of return is a big worry for the Somali community. I have lived twenty years here in Kenya, my children were born here, I got my wife here. How will I live my life in Somalia? The war is still there, we hear that innocent people are killed, some children still die because of the explosions, there are few schools. There is nothing for us there. The problem we ran from is still there, in fact the current situation is more difficult than before. People are killed in mosques and schools. If you wake in the morning, you don't know if you will return to your house. So it gives us fear. How can I take my family back to that? (*Issack, 52, Eastleigh*)⁷⁴¹

Indeed the experience of Isaack raises questions about whether it is dignified to repatriate after such a long time as 20 years or more. Should statehood be tied to one's state of birth? Is it not better to integrate refugees in the host community especially after such deep ties as marriage and family exist in the country of asylum? Must solutions to refugee be problem limited to repatriation? Refugees who have resided in an asylum country for many years may find it easier to integrate than to repatriate even if conditions at home since changed for good.

The case of Somali refugees is further complicated by the fact that central Somalia and Southern Somalia is largely inaccessible. Given the difficulties in obtaining accurate information as to the true situation in south and central Somalia, repatriation should also be treated with extreme caution, and raises questions as to whether it is possible for the

⁷⁴¹ Amnesty International Report. *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London, p.30 Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 13th May, 2016]

UNHCR to guarantee that returns can take place in safety and dignity at this time.⁷⁴² Consequently, most contemporary refugee populations will likely remain in exile for considerable periods of time, if not permanently.⁷⁴³ It is useful, therefore, to review more closely the nature and prospects for repatriation in Africa, as well as look at some of the problems inherent in the adoption of this option in attempts to resolve Africa's refugee dilemma.⁷⁴⁴

5.1.2.2 Free Choice?

As mentioned above, the *Handbook on Voluntary Repatriation* defines the voluntary character of repatriation in relation to the situation in the country of asylum, permitting a free choice for the refugee.⁷⁴⁵ However, the UNHCR very cautiously recognises:

The issue of 'voluntariness' implying an absence of any physical, psychological, or material pressure is, however, often *clouded* by the fact that for many refugees a decision to return is dictated by a combination of pressures due to political factors, security problems or material needs.⁷⁴⁶

In the case of voluntary repatriation to Afghanistan, the role of Pakistan's and Iran's policy and practice towards Afghan refugees was and continues to be extremely important in relation to 'voluntary' decision making. In recent years Pakistan and Iran have shown signs of asylum fatigue, largely due to the lack of burden-sharing by the

⁷⁴²Amnesty International, 'No Place like home', London: Amnesty International, 2014, p.48

⁷⁴³J. Rogge, & J. Akol, 'Repatriation: Its Role in Resolving Africa's Refugee Dilemma', *International Migration Review*, vol.23, no. 2, 1989, p.187

⁷⁴⁴J. Rogge, & J. Akol, 'Repatriation: Its Role in Resolving Africa's Refugee Dilemma', *International Migration Review*, vol.23, no. 2, 1989, p.187

⁷⁴⁵United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, UNHCR, Article 2.3, 1996,

⁷⁴⁶United Nations High Commissioner for Refugees, *Handbook on voluntary repatriation: International protection*, Geneva, UNHCR, Article 2.3, 1996

international community. A Pakistani government official expressed, 'if donors have donor fatigue... then we have asylum fatigue... If donors' patience with the Afghan situation has run out, then so has ours'⁷⁴⁷. This development resulted in policies aimed at pushing refugees back to Afghanistan in contravention of international human rights standards. In addition, public hostility towards Afghan refugees increased in both countries.⁷⁴⁸ This general hostility on the part of authorities as well as the public, led many refugees to decide to repatriate.

Cases of host countries applying a raft of measures in order to coerce the refugees to agree to return are common, especially since the last quarter of the 20th century when refugee fatigue continues to increase. On report for instance asserts that:

The British Home Office has consistently and for many years resorted to measures that force asylum seekers to agree for voluntary repatriation. This has been the case as well in other European nations where Tamil asylum seekers have sought refuge. These include, taking away legal rights and welfare payments or denying basic facilities. In effect, the so-called 'voluntary return' is not voluntary.⁷⁴⁹

⁷⁴⁷United States Committee for Refugees 2001, cited in Turton and Marsden 2002, p.15

See also 'Global humanitarian emergencies: Trends and projections 2001-2002',

https://www.dni.gov/files/documents/Global%20Humanitarian%20Emergencies_2001.pdf [Accessed 12th April, 2018]

⁷⁴⁸Amnesty International., *Afghanistan, Out of Sight, Out of Mind: The Fate of the Afghan Returnees*, 2003. AIIndex: ASA 11/014/2003. P.7

⁷⁴⁹European Council on Refugees and Exiles. *Increasing Refugee Participation in the Field of Voluntary Return*, 2005, p.21 Available at: <<http://www.ecre.org/files/ECRE%20Vol%20Ret%20Handbook%20051.pdf>>. [Accessed 25 April, 2011].

According to one project report by the European Council on Refugees and Exiles (ECRE)⁷⁵⁰, repatriation can only be classified as voluntary when:

- an individual with a legal basis for remaining in a third country has made an informed choice and
- has freely consented to repatriate to their country of origin or habitual residence; and
- has given their genuine, individual consent, without pressure of any kind; when such consent is elicited as a result of lack of effective protection in the host country or because of an imposition of sanctions, this cannot be classified as voluntary repatriation; and
- the legal and procedural safeguards have been fully respected.

Elizabeth Andersen, while warning European host nations against the pre-mature repatriation of refugees from war torn Bosnia-Herzegovina, notes that,

‘Unless they take a longer view, these asylum states are likely to rid themselves of the refugee burden in the short-term, only to face another mass influx of asylum-seekers when conflict reignites in Bosnia-Herzegovina in the not-so distant future.’⁷⁵¹

Warnings by Elizabeth Andersen were not only real but could befall any other host state that attempts to forcefully repatriate when conditions at home are not yet conducive for return.

⁷⁵⁰ A report by ECRE titled *Increasing Refugee Participation in the Field of Voluntary Return*-January 2004-May 2005.p20

⁷⁵¹E. Andersen, ‘The role of asylum states in promoting safe and peaceful repatriation under the Dayton Agreements’, *European Journal of International Law*, vol.7.no.2, 1996,p 206.

As to whether the current campaign by the Government of Kenya meets the threshold for voluntary repatriation is a debatable and a contentious issue. This is because in spite of the provisions that envisage what constitutes a voluntary return, state and non-state actors, just like in any legal provision, differ in its interpretation. Kenya has insisted that the fact that Somalia is now considered safe for return, at least according to her, is in itself a motivation enough for Somali refugees to return. This position is however challenged by some actors like Amnesty International who argue that return to Somalia does not meet the criteria for voluntary return because refugees feel they have no option but to return to their country of origin. Hence, this amounts to forced return⁷⁵².

5.2 Refugees in spontaneous repatriation

Despite the paramount role of the refugees in ensuring a successful repatriation exercise, whether organized or spontaneous, refugees have not been central to the negotiation and preparation stages of the repatriation process. This compromises the chances of success, especially in organized repatriations. The fact that 'the great majority of refugees who return to their home do so on their own initiative, rather than by agreeing to join a formal repatriation plan devised under international auspices after a 'fundamental change of the circumstances'⁷⁵³ means that refugees ought to take a more proactive role in the repatriation process. Thus, refugees are called to respond to an agreement that they were not involved in.

⁷⁵²Hathaway, James C., *The Rights of Refugees under International Law* (2005), p. 464.

⁷⁵³See UNHCR, *The State of the World's Refugees: The Challenge of Protection*, Penguin Books, Middlesex, 1993, p. 107

One view, which aims at empowering refugees by seeing them as the main actors in the repatriation process, from scholars like Barry Stein and Fred Cuny, goes as far as repudiating the relevance of any formula for a structured repatriation regime by arguing that:

The refugees are the main actors in the contemporary practice of voluntary repatriation. They are the main decision-makers and participate in determining the modalities of movement and the condition of reception. Refugee-induced repatriation is a self-regulating process on the refugees' own terms. The refugees apply their own criteria to their situation in exile and to conditions in their homeland and will return home if it is safe and better by their standards.⁷⁵⁴

These arguments suggest that refugees will automatically repatriate when repatriation is the right time, as determined by conditions at home, and when refugees themselves are ready and willing to do so. The unwillingness of refugees to return, therefore, implies that in their own assessment either the reasons for the flight still exist at home or they have not sufficiently improved to provide a dignified life.

Even though many refugees repatriate spontaneously without any repatriation plan, i.e. organized repatriation, this does not imply that there are no benefits attributed to organized repatriations. For instance, organized repatriations help outline the

⁷⁵⁴B. Stein and Fred C. Cuny, 'Repatriation in a Civil War/Conflict Situation', paper presented at the Round Table Consultation on Voluntary Repatriation and UNHCR, Geneva, Switzerland, 2 to 3 June 1992, p 3.

responsibilities of the government in the home country so as to ensure the conditions for safe return. Organized returns also make it easier to monitor refugees upon return.⁷⁵⁵

George Okoth-Obbo, commenting on the OAU Convention, has also argued for the need to incorporate ordinary refugees in the repatriation process by arguing that:

The other point is that, within the set-up of the provisions of the Convention, refugees are configured principally as *subjects* of a repatriation framework being established for them by State and international actors but in the construction of which they themselves play no major part. We, however, see today many politically-charged and protracted situations where it is apparent that the return of refugees will require more than just the actions of States alone in making 'adequate arrangements for the safe return of those who request repatriation.' A role must be provided for 'ordinary refugees' to be the architects of their own destiny not just in terms of the technical aspects of the repatriation, but above all in reference to the political issues.⁷⁵⁶

5.3 Somali refugee perspectives on return

While the much hyped repatriation by the Government of Kenya, the UNHCR and SFG seem to be gaining momentum, a study by MSF in August 2013 seems to indicate the contrary. In their study, MSF found out that, overall, there is a negative correlation between the extremely poor conditions and the intention to return; counter-intuitively, experiencing bad living conditions appears to weaken, rather than reinforce, the intention

⁷⁵⁵ G. Okoth-Obbo, 'Thirty Years On: A Legal Review Of The 1969 OAU Refugee Convention Governing The Specific aspects Of Refugee Problems In Africa', *Refugee Survey Quarterly*, vol. 20, no.1, pp.79-138, Published Conference Papers.

⁷⁵⁶G. Okoth-Obbo, 'Thirty Years On: A Legal Review Of The 1969 OAU Refugee Convention Governing The Specific Aspects Of Refugee Problems In Africa', *Refugee Survey Quarterly*, vol.20, no. 1, 2001, p 126

to leave the camp and return to Somalia⁷⁵⁷.MSF's study shows the intention to return related to a number of factors and it appeared more frequently among refugees experiencing better living conditions in terms of security and access to water and latrines than among those worse off.⁷⁵⁸Dagahaley inhabitants weakened by a lack of access to essential services such as food, water and health care are likely not to have the material and inner resources allowing them to return to Somalia. On the other hand, refugees who are 'well-off' in terms of assistance may at least consider travelling home.⁷⁵⁹

Asked whether they were ready to repatriate to Somalia, the survey found that:

a minority of refugees in the camp (14%) would be willing to repatriate to Somalia now. Most dream of resettlement to a third country, but this is a solution that reaches only a few thousand refugees per year... In urban centres, despite discrimination and police harassment, Somalis are finding ways to sustain themselves economically and to integrate.⁷⁶⁰

In another study, findings by the Refugee Consortium of Kenya (RCK) in their report of 2012 suggest that only a meager 14% were ready to repatriate at the time considering the prevailing circumstances in Somalia. The same RCK report, however, notes that while

⁷⁵⁷ MSF Study finding conducted in 2013 at Dagahaley camp, one of the camps that forms the Dadaab refugee camp.

⁷⁵⁸<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/crisis/abusada-bianchi.pdf> [Accessed 5th April, 2018]

⁷⁵⁹Caroline Abu Sa'Da and Sergio Bianchi. *Perspectives of refugees in Dadaab on returning to Somalia*, 2013, 88-89

⁷⁶⁰ A Refugee Consortium of Kenya (RCK) report titled 'Asylum Under Threat: Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor'. A publication of the Refugee Consortium of Kenya with the support of the Danish Refugee Council, June 2012.

voluntary repatriation remains the most likely⁷⁶¹ option for the majority of Somali refugees in Kenya and is the solution that the Government of Kenya is strongly advocating, mass return to Somalia for those in Dadaab, is unlikely to prove viable after such a long refugee history. It nevertheless proposes that, though peace has not returned to Somalia, key actors (the UNHCR, donors and the Government of Kenya) should start planning and budgeting for a phased voluntary return process for the coming three to five year period.⁷⁶²

A more recent study by Médecins Sans Frontières (MSF), conducted in the months of July and August 2016, and released in October indicate that a majority of refugees (86%) in Dagahaley (one of the camps in Dadaab complex) are unwilling to return because of the many security concerns⁷⁶³ in Somalia. Explaining her position not to return, the report quotes a member of the women's group who feared that, 'both the militia and the Federal Government of Somalia might forcefully recruit the youth into the forces. My son was abducted in Somalia; I have three other boys and I am afraid they will be at risk if they go back'.⁷⁶⁴ Amnesty International has warned that the focus on repatriation can lead to

⁷⁶¹Refugee Consortium of Kenya, *Asylum Under Threat: Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor*, 2012,p.12

⁷⁶²Refugee Consortium of Kenya, *Asylum Under Threat: Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor*, 2012, p.12

⁷⁶³Médecins Sans Frontières., *Dadaab to Somalia: Pushed Back into Peril*, 2016. www.msf.org/en/article/kenya-dadaab-return-refugees-somalia-current-conditions-inhumane-and-irresponsible [Accessed November 12, 2016]

⁷⁶⁴Médecins Sans Frontières., *Dadaab to Somalia: Pushed Back into Peril*, 2016,p.3 www.msf.org/en/article/kenya-dadaab-return-refugees-somalia-current-conditions-inhumane-and-irresponsible [Accessed November 12, 2016]

involuntary and premature returns that violate internationally recognized principles of asylum and *non-refoulement*, and which in themselves may lead to further human rights abuses and renewed violence in Somalia⁷⁶⁵.

While a majority of respondents in this study were unwilling to return, it emerged that this decision was mainly informed by inadequate consultation with the UNHCR, Government of Kenya and Somalia that made many refugees consider the repatriation exercise a great gamble shrouded with a lot of uncertainty, and hence a majority were unwilling to take such a huge risk. Many, too, complained that there was very little reliable information on the actual state of security in Somalia as many areas of Southern and Central Somalia were still inaccessible. The attack⁷⁶⁶ on the KDF base in El Adde on 15th January 2016 only worsened these fears hence the conclusion that Somalia is still too dangerous for return. It also entrenched the view that the militia, Al Shabaab, though weakened, is still a formidable force that can still mount major attacks on their targets both in Kenya and Somalia.

A report by MSF titled 'Dadaab to Somalia: Pushed Back into Peril'. The study was carried out in Dadaab during the months of July and August 2016 sampled 838 respondents and was released in October 2016.

⁷⁶⁵ Amnesty International (2014:9). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

⁷⁶⁶ This was the worst attack on a KDF base in Somalia that caused major casualties in both sides. Some sources have estimated the fatalities on the KDF as more than 100 soldiers while others have quoted a lesser number. The Government of Kenya did not give an official figure of Kenyan soldiers that were killed when the Al Shabaab overran their camp after attacking it with car bombs.

The Government of Kenya's plan to close Dadaab camps by end of 2016, as expected, did not materialize as the pace of repatriation was slow and the logistics complex. Somali refugees, probably aware of the unsuccessful previous pronouncements by the Government of Kenya to close the refugee camp, remained in the camps after 2016 with the Government of Kenya extending the deadline. While many have criticized such pronouncements as amounting to negative push factors, its implication in influencing mass returns could be termed as negligible. It appears negative push factors in exile do not necessarily influence refugees to return unless this is enforced. The encampment policy⁷⁶⁷ that obliges the refugees to settle in designated areas (Dadaab and Kakuma) with restricted movements was designed to make refugee life temporary and unattractive. While ordinarily this should encourage returns as fast as conditions at home could allow, Dadaab and Kakuma have been in existence for more than two decades and the situation is unlikely to change.

Many Somali refugees in Dadaab agree that repatriation is ultimately the most realistic solution to the refugee problem but differ on when this should be realized and how to carry it out⁷⁶⁸. Many teenagers and young adults, below 30 years, who took asylum in Kenya from 1991 hardly have any living memories about Somalia and consider Dadaab refugee camps as 'home' compared to their country of origin, that some have never

⁷⁶⁷Republic of Kenya, Refugee Act 2006, Section 16 (2) (b) and Section 17 (f).

⁷⁶⁸ Interview at Hagadera camp Dadaab, 17 November 2016.

Focus Group Discussion at Dadaab UNHCR Sub-office, 18th November, 2016

seen.⁷⁶⁹ Student respondents attending secondary schools managed by Windle Trust Kenya (WTK) (all of whom are above 18 years and therefore considered adults under the Kenyan law) confessed that they hoped to excel in their final KCSE examinations and attain the minimum B (Plain) grade that guarantees refugees a scholarship to mostly Canadian universities and other universities in the Western world. Indeed WTK has offered secondary education to thousands of refugees across their six WTK-managed schools in Ifo, Hagadera and Dagahaley⁷⁷⁰. These schools offer free education including buying uniforms and books. In collaboration with other partners, it has offered college and university scholarships⁷⁷¹ to hundreds of refugees who managed to get a C+ grade in KCSE examinations⁷⁷². Most beneficiaries to the scholarship are normally considered for resettlement⁷⁷³ in Western Europe, Canada, Australia and USA. It is this hope, and of course other opportunities brought by education, that has kept thousands of refugees in schools.

⁷⁶⁹ Interview, Omar, at Ifo Camp, Dadaab 14th August 2016.

⁷⁷⁰ <http://windle.org/> [Accessed 18th March, 2019]

⁷⁷¹ http://windle.org/scholarship_pre-requisites.html <http://windle.org/> [Accessed 18th March, 2019]

⁷⁷² <http://windle.org/> <http://windle.org/> [Accessed 18th March, 2019]

⁷⁷³ Beneficiaries of resettlement in third country are not required to come back to the refugee camps as they are granted residence and can gain meaningful employment abroad after completion of their studies. Many refugees look forward to resettlement even though only a meager 1% of all refugees benefit from such programs. This percentage is envisaged to even be less than 1% as many Western countries shy away from resettlement programs and adopt a more restrictive approach to asylum seekers following the recent terror attacks, some of which have been attributed to refugees. Many refugees in the camps benefit from remittances from their friends and relatives who have settled abroad after benefitting from the resettlement program.

5.4 Contemporary asylum seekers in a global perspective

The recent refugee influx of refugees from Iraq and Syria, to Europe in search of asylum has raised the refugee crises into an all new level. Many European Union countries, concerned with the terror threat associated with Islamic refugees and the economic and political dynamics associated with hosting such refugees have closed their borders, mostly through more restrictive refugee policies.

The fact that most refugees are in developing countries⁷⁷⁴ implies that the refugee problem was largely a problem of the developing world and marginally affected the developed world, as they would only resettle a number of refugees in their home countries depending on their assessment. Resettlement has however only benefited a few refugees globally-about 1% of the total number of refugees. However, the recent influx of hundreds of thousands of refugees from the Middle East and Africa to Europe indicates that the refugee problem is now spreading to Europe. The desperation of these asylum seekers is evident, considering the perilous journey they undertake in boats across the Mediterranean.⁷⁷⁵ According to one Cable News Network (CNN) report, 'Eritreans want to escape repression or military service; Somalis flee Al Shabaab and clan warfare; Syrians have given up hope of returning'.⁷⁷⁶ Unless the asylum seekers and prospective ones are fully engaged in finding a lasting solution, it appears the attempts by millions to

⁷⁷⁴F. D'Souza, *The refugee dilemma : international recognition and acceptance*, London, Minority Rights Group, 1980

⁷⁷⁵<http://edition.cnn.com/2015/04/21/europe/mediterranean-boat-migrants-lister/>

⁷⁷⁶<http://edition.cnn.com/2015/04/21/europe/mediterranean-boat-migrants-lister/>

cross to Europe will continue or even increase in magnitude depending on prevailing circumstances in the Middle East and Africa.

Because of perennial refugee problems, and restrictive policies in countries of asylum, especially in the developing societies of Africa, Asia and Central America, many host states have proposed repatriation as, arguably, the only feasible solution to the refugee problem but not necessarily to the problem of individual refugees.⁷⁷⁷ Host states, however, seem to be motivated by the fact that local integration is likely to face resistance compared to repatriation. In supporting repatriation, host states are simply protecting their own interests and see the integration of refugees as political, social and economic burdens. This attitude should change as studies⁷⁷⁸ suggest integrated refugees can be as productive as any other resident if given equal opportunities. For example, study by Lindley⁷⁷⁹ shows that remittances from diaspora has helped refugees in Eastleigh, Nairobi and support their businesses and other economic ventures.

In the past few years, many European countries have seen an increase in refugee influxes that has quickened Europe to seek a lasting solution to the refugee problem. While

⁷⁷⁷G. Kibreab, 'Citizenship Rights and Repatriation of Refugees', *International Migration Review*, New York, The Center for Migration Studies of New York Vol. 37, No. 1, 2003, p26

⁷⁷⁸European Parliament, 'Integration of refugees in Austria, Germany and Sweden: Comparative analysis', 2017 Available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614200/IPOL_STU\(2018\)614200_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614200/IPOL_STU(2018)614200_EN.pdf) [Accessed 20th April, 2018]

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614200/IPOL_STU\(2018\)614200_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614200/IPOL_STU(2018)614200_EN.pdf)

⁷⁷⁹A. Lindley, A. 'protracted displacement and remittances: the view from Eastleigh, Nairobi'. *New issues in refugee research*, Research Paper No. 143.

denying refugees' entry at the frontiers has been termed inhumane and insensitive to the refugees, some countries have denied them entry in the very first instance or completely closed their borders.⁷⁸⁰ Closing borders and denying refugees entry⁷⁸¹ violates international law governing refugee affairs.

The closing of borders by many would-be host states is a signal that refugee-hosting fatigue is real and is getting worse by day. Perhaps rejecting refugees at the frontiers is worse than forcefully repatriating refugees after hosting them for some time. In this regard, many European countries have lost the moral authority in safeguarding the global interests of refugees and would perhaps, in the near future, push for change in the refugee regime in line with emerging refugee challenges. Otherwise, the trend set by Europe from 2015 to 2018 in the management of refugees has established a precedent where other countries can reject refugees at the frontier or forcefully repatriate refugees. It is therefore not surprising that the world would soon converge with the view to review the refugee regime where many states are likely to protect their interests by advocating for a refugee regime where the state is in control of who actually enters their borders without being subjected to international obligations to protect refugees. This is already

⁷⁸⁰News Deeply, 'Europe's refugee frontier: pushbacks and border closures in Serbia', 24th March, 2017 Available at <https://www.newsdeeply.com/refugees/articles/2017/03/24/europes-refugee-frontier-pushbacks-and-border-closures-in-serbia-2> [Accessed 20th April, 2018]

R. Rutten, 'Why Once-Welcoming Countries in Scandinavia Closed Their Borders to Refugees', 4th January, 2017. Available at <https://www.worldpoliticsreview.com/articles/20824/why-once-welcoming-countries-in-scandinavia-closed-their-borders-to-refugees> [Accessed 20th April, 2018]

⁷⁸¹ K. Long, 'No Entry: A review of UNHCR's response to border closures in situations of mass refugee influx', UNHCR. Available <http://www.unhcr.org/4c207bd59.pdf> [Accessed 20th April, 2018]

happening in violation of various refugee instruments that prohibit states from rejecting asylum seekers at the frontier. The fact most states perceive refugees as a burden rather than as productive individuals worsen the already restrictive refugee policies. For instance, in Europe and other advanced economies, immigrants have, on average, lower participation rates, employment rates and wages than natives,⁷⁸² and restrictions prevail on labour market access to asylum seekers in some countries.

In spite of the existing refugee instruments, desperate refugees crossing large water bodies with rickety boats in search of asylum abroad and their inability to receive the much needed protection has raised questions as to whether the needs and views of such asylum seekers is actually considered by the international community. This becomes a thorny issue especially considering that asylum seekers are not yet under the mandate of the UNHCR, the UN refugee protection agency. The refugee problem has become a major humanitarian problem for many states who are now admitting their unwillingness and/or inability to shoulder the refugee problem both in the short or long term. A refugee-centered solution is required, as it appears the international community has missed the point on how to comprehensively address the refugee problem.

⁷⁸² See Kerr and Kerr (2011) for a review of literature on the labour integration of immigrants in general, and Ott Eleanor (2013) for a review of the literature on the labour market integration of resettled refugees.

5.5 Increasing the refugee democratic space within the UNHCR: A right to vote?

The Kenyan experience, like many other cases highlighted previously of Afghan, Rohingya and Rwandese refugees, suggests that refugee views are of little consideration when decisions are made to repatriate or otherwise. One would therefore ask the fundamental question: How can one strengthen refugee participation within the UNHCR as a refugee protection agency? While the UNHCR cannot enforce decisions, as this is the mandate of the host state, it is in itself paramount that the refugees be given a voice within the international arena. This will ensure that the decisions arrived at by the UNHCR represents the sentiments and perceptions of refugees.

There is probably no other democratic way of safeguarding refugee opinions apart from allowing refugees to vote on important decisions, like that of repatriation, within the UNHCR framework. Results of such votes will in effect put to rest the whole debate on whether refugees were voluntarily repatriated and/or whether the repatriation met the threshold of voluntariness. While allowing refugees to vote should not infringe on individual rights of refugees to voluntarily choose to repatriate or otherwise, it could be an important step in entrenching their views within the UNHCR.

While voting ordinarily allows citizens to change (or keep) the government of the day, voting among refugees could help the UNHCR and the international communities make decisions that are refugee-centered. This will consequently legitimize any decision regarding refugee repatriation while in the worst case scenario ensure that their voices

are heard, regardless of the manner in which the repatriation is carried out. After all what is the rationale of refugee actors deciding when refugees should repatriate or otherwise when the decision to flee was made by individual refugees on the assessment of prevailing risk(s)? Why not allow refugees to exercise their democratic right to decide directly instead of allowing the UNHCR to decide, on their behalf, and then question the validity and reliability of their decision? Does the fact that refugees are Persons of Concern to the UNHCR relinquish the ability of these refugees to represent themselves on matters that concern them? As it stands, the fact that refugees are vulnerable people does not imply that they cannot be part of a solution to the problems that bedevil them.

5.6 Conclusion

There is a clear indication that there is a mismatch between the refugee perspectives and those of the tripartite parties on repatriation. It appears that the host state, state of origin and the UNHCR prepare the tripartite agreements on repatriation regardless of the contrary views held by refugees. Ideally, refugees as key players in matters of repatriation should have their views considered paramount. As it is presently, this may not be the case. The delegated responsibility that the UNHCR is exercising on behalf of the refugees seems to overshadow the voices of refugees themselves. A more refugee-centered approach on refugee matters should be considered and allowed to thrive in order to promote what could be termed as home grown solutions to the refugee problem.

The findings in Dadaab and in other selected case studies indicate that refugee inclusivity in repatriation and other refugee matters are hardly taken into account when deciding on refugee matters. This in effect has violated the rights of refugees who are relegated to the periphery on matters that directly affect them. It is paradoxical that those who make the decision on matters of refugees are themselves not directly affected by these decisions. While state and non-state actors are the key agencies in the refugee regime, their importance is overemphasized.

I have criticized the nature of organized returns that seem to work on the premise that refugees should return en masse. I have criticized the fact that refugee voices seem to have been overshadowed especially in organized repatriations. I suggest that refugee democratic space within UNHCR be expanded. I have cited cases of Afghan refugees whose perspectives may suggest they were not fully informed of what awaited them at home. They simply perceived repatriation as the only option they had been given hence impeding their freedom to choose otherwise. Moreover, I have cited the 1996 case of Rwandan refugees in Tanzania as amounting to involuntary return. While what the refugees feared might happen to them upon return did not actually happen, their fears were founded and needed to be respected nevertheless.

Similarly, I have explored the views of Somali refugees in Dadaab whose majority are not ready yet to voluntarily repatriate to Somalia despite the TA to facilitate return. Indeed

the uptake of the voluntary repatriation return package by UNHCR has been very slow with only about 20%⁷⁸³ of refugees repatriated as at February of 2018. I maintain that many refugees still perceive the security situation in Somalia as volatile and hence are reluctant to return.

The large number of refugees seeking entry to European countries has put potential European host states in dilemma between humanitarian concerns and the need to protect their borders for security reasons. Given this, it is probably time the refugee regime is changed in line with these new realities. As it is, the refugee regime is inadequate particularly when dealing with millions of refugees.

I insist that any decisions touching on refugees must be refugee centered so as to have the legitimacy among refugees. Engaging refugees in decision making will help decision makers arrive at decisions that are generally acceptable to a majority of refugees. Even in organized repatriations, I argue that individual refugees should be allowed to make an informed decision and have free choice to return or otherwise.

In chapter six, I seek to explore a refugee centered approach to repatriation that can apply more broadly to Africa.

⁷⁸³<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2018/02/Voluntary-Repatriation-Analysis-2-February-2018.pdf> [Accessed 20th April, 2018]

CHAPTER SIX

A REFUGEE-CENTERED APPROACH TO REPATRIATION THAT COULD APPLY BROADLY TO AFRICA

This chapter extrapolates ways in which a refugee-centered approach to the refugee problem could apply more broadly to Africa. Its aim is to theorize how refugee-centered approaches could solve or, at least, contribute to interventions mitigating the refugee problem. The chapter explores several remedies that could, in the long term, help to deal more proactively with the refugee problem. The remedies explored are political, legal, economic or social in orientation. Though not conclusive, the options explored are expected to contribute in helping to remedy the refugee problem in the 21st century and beyond.

While this chapter does not provide a comprehensive assessment of the conditions facing refugees and returnees in Somalia and elsewhere in Africa, it helps provides an overview of refugee situations in exile and upon return. Considering that refugee situations in Africa have similar characteristics, in terms of causes and their protracted nature, there is need for a more holistic, broad and proactive approach to refugee situations in Africa. Otherwise, the simplistic, narrow and reactive approaches that exist and have acted as a stop gap measure will continue to result in unsustainable solutions. A more holistic

approach may include new refugee legislation, a focus on conflict prevention and the need to address the reasons for the flight of refugees and not just their plight in the countries of asylum.

6.1 Why the 1951 UN Convention refugee regime must change: updating refugee law

The 1951 United Nations Convention Relating to the Status of Refugee⁷⁸⁴ is generally regarded as the blueprint that guides laws on refugees in the world. It is on the basis of this Convention that refugees are considered to be Persons of Concern by the United Nations and therefore entitled to international protection, with the principles of *non refoulement* and voluntary repatriation being part of the provisions envisaged to cushion the refugees from being exposed to danger while fleeing persecution.

However, there are indications in Africa, Europe, America and even Asia that it is time to change the legal framework by which refugee crises in the world are managed. In Kenya, the government has already indicated every intention to repatriate thousands of Somali refugees by closing down the Dadaab refugee camp. Kenya cites national security, threatened by Al Shabaab, as having informed this decision⁷⁸⁵. The government of Turkey, after admitting approximately 2 million refugees, has now closed its

⁷⁸⁴United Nations High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, Geneva, UNHCR, 1951. Available at www.unhcr.org/3b66c2aa10.pdf [Accessed 23rd April, 2018]

⁷⁸⁵ 'Kenya announces Dadaab refugee camp will close by November', www.bbc.com/nes/world-africa-36418604 [Accessed 15th December 2016]. See also S. Shams, 'Kenya to close refugee camps amid security and economic concerns', 7th May, 2016, www.dw.com/n/kenya-to-close-refugee-camps-amid-security-and-economic-concerns/a-19240991 [Accessed 15th December 2016]

borders⁷⁸⁶and President Erdoğan has indicated his support for Kenya's decision to repatriate Somali refugees. Recently, the European Union has been grappling with thousands of refugees⁷⁸⁷, especially from Syria, and has lost the moral authority to reprimand those perceived as neglecting their international obligations regarding the protection of refugees. The refugee and immigrant crises equally affect the Americas and Asia.

This therefore begs the question: what is the way forward? While this may not have a straight forward answer, it is evident that global protocols that impact on refugees must be changed and aligned with the realities of the 21st century. First, the 1951 UN Convention that currently guides the refugee regime was, at the time, made with a view to resettle refugees who had, at that time, fled during the Second World War. At the time, the premise was that the refugee crises were a temporary problem and that refugees would soon return to their home countries as the WW2 had ended. Although the subsequent 1967 Protocol and the 1969 O.A.U Convention attempts to remedy this, there is still room for amendment in line of new refugee realities. This is no longer the case in the 21st Century where most refugee situations are protracted and refugees could be in exile for decades. Secondly, refugees at the time fled because of persecution. What happens in the 21st century when we have millions of economic refugees? For instance, a

⁷⁸⁶ D. Alrifai, D. and U. Uras, 'HRW: Turkey pushing back Syrian refugees at border', 24th November, 2015, www.aljazeera.com/news/2015/11/hrw-turkey-pushing-syrian-refugees-border-151123095456503.html [Accessed 15th December 2016]

⁷⁸⁷ 'Refugee Crises in Europe', <http://ec.europa.eu/echo/refugee-crisis> [Accessed 15th December 2016]

larger proportion of Somali refugees in Dadaab fled Somalia between 2011-2012 following the widespread famine⁷⁸⁸ in the horn of Africa and not necessarily because of direct political persecution. If a life is in danger because of persecution or because of famine, is there a difference to the outcome? Absolutely not, regardless of the source of danger, the refugee law should envisage all forms of danger and not just limit itself to those occasioned by political persecution. This is partly because the rights regime is liberal, driven by civil-political rights but not effectively by socio-economic ones. Thirdly, host states are more reluctant to host refugees today as compared to the late 1940s when most host states warmly welcomed the refugees. This has been informed by the complex nature that refugee situations have turned out to be—that they have tended to be more protracted than were previously thought as temporary problem. The protracted nature of the refugee problem may not have been contemplated in the mid 20th century refugee regime that sought to help resettle post Second World War refugees.

The major problem, therefore, with the 1951 UN Convention, the roadmap of all other refugee regimes, is that it perceived the refugee problem as a short term problem. This is not currently the case as the refugee problem today is more protracted and prolonged. Refugees living in camps for decades is not unusual. The 1951 UN Convention was

⁷⁸⁸ 'Thousands flood world's largest refugee camp in Kenya', 9th August 2011, www.bbc.com/news/world-africa-14463798 [Accessed on 10 January 2017]. See also D. McKenzie, 'No respite for refugees facing famine', July 20th, 2011. <http://edition.cnn.com/2011/WORLD/africa/07/20/kenya.somalia.drought.sarah/> [Accessed on 10 January 2017]. The famine forced many Somalis to cross over to Kenya and ended up at Dadaab refugee camps. Such displacement is not as a result of persecution as contemplated under the 1951 UN Convention.

developed with the WW2 in mind and may not have envisaged the protracted nature of the 21st century conflicts that may produce thousands of refugees over a long period of time, often many years, with no end in sight.

Like any other legal protocol, the 1951 UN Convention must evolve in order to address emerging issues and to be fit for purpose. As currently constituted, the Convention is narrow in scope and perceives the refugee problem as a 'one off' single problem that could be addressed immediately. Protracted conflicts have turned the refugee problem into a more permanent problem. This has kept the refugee numbers increasing as more conflicts seem to emerge faster than are being solved. It is thus time to direct the resources of the international community to address the reasons for the flight of refugees and not simply their plight. National conflicts that are likely to get out of hand should be resolved by the international community before it is too late in order to avert the impending refugee influx. While states are sovereign in dealing with domestic issues, early intervention by the international community could help avert major conflicts that could otherwise uproot thousands. While the sovereignty of states needs to be respected, this should not be at the expense of the loss of lives and livelihoods. Prevention is, obviously, better than cure.

While other refugee instruments such as the 1969 OAU Convention has expanded the definition of a refugee to include people fleeing external aggression, internal civil strife,

or events seriously disturbing public order⁷⁸⁹, the 1951 UN Convention emphasizes a well-founded fear of persecution as the basis for one to be granted asylum⁷⁹⁰. Many actors disagree on whether the massive influx of refugees, in millions, actually meets the threshold of the 1951 UN definition of a refugee. Apart from expanding the definition of a refugee, the 1967 Protocol⁷⁹¹ obliges states to comply with the substantive provisions of the 1951 Convention to all persons covered by the refugee definition in Article 1, without any limitation of date⁷⁹². The UN definition is limited as it does not include those fleeing famine, activities disturbing public order, economic refugees etcetera. Indeed the 1969 OAU definition⁷⁹³ is broader and is closer to the reality of African refugees.

Economic hardships in many parts of Africa and the Middle East has made many migrants flee, seeking better economic prospects abroad. This has created a perception in the West and the developed world that a majority of the millions of refugees seeking asylum in the Western world are actually economic refugees. Albeit this may not be entirely true, economic hardship is a reality and reason to flee. As long as life is at stake, there is no reason to discriminate between economic and political refugees fleeing

⁷⁸⁹ The Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa, 10th September 1969, OAU Document CM/267/Rev.1.

⁷⁹⁰ The 1951 UN Convention Relating to Status of Refugees, 28th July 1958, United Nations Treaty, vol.189 No.2545.p.137.

⁷⁹¹ UNHCR, Convention and Protocol Relating to Status of Refugees, Available at <http://www.unhcr.org/3b66c2aa10.pdf> [Accessed 23rd April, 2018]

⁷⁹² UNHCR, Convention and Protocol Relating to Status of Refugees, Available at <http://www.unhcr.org/3b66c2aa10.pdf> [Accessed 23rd April, 2018]

⁷⁹³ OAU Convention Governing the Specific Aspects Of Refugee Problems in Africa ,Adopted on 10 September 1969 by the Assembly of Heads of State and Government. CAB/LEG/24.3. It entered into force on 20 June 1974. Available at <http://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html> [Accessed 23rd April, 2018]

persecution. The fact that their lives are in danger is reason enough to flee. After all the fate of them all if they don't flee is same-imminent death or destruction.

Despite the debate of who a refugee actually is, the principle of non refoulement seems to be protective of the asylum seeker to the detriment of the people in the host state. While the intention of the principle may have been to protect the human dignity during times of distress, it gives the asylum seeker the ability to enter another state. This in itself denies the host state the opportunity to scrutinize asylum seekers at the frontier before allowing entry. This blanket provision may not have considered the 21st century realities where not everyone seeking asylum is a peace-loving individual. With the increase in terrorism and radicalization, one may also draw upon the non refoulement principle to access another country as an asylum seeker only to carry out terror related activities or crime. The more restrictive approaches to refugees that are adopted by host states is an indication that they may not be comfortable with an unrestricted entry of asylum seekers and would seek to restrict their activities within their boundaries as a way of 'managing their perceived bad influence'. These negative perceptions are those of their populations whether or not there is any basis in fact.. Many to be host states have rejected asylum seekers at the frontiers with asylum seekers facing dreadful treatment at the border. Restricted entry is often informed by the perceived fear that allowing them entry may make it difficult for the host states to monitor or expel them if they deemed fit.

Consequently, the principle of non refoulement has remained more theoretical than practical.

There are no refugee instruments that address the reasons for the flight of refugees. The need to have a paradigm shift from the plight of refugees to the reasons for the flight is crucial because many refugee host states are becoming reluctant to host refugees. There is a need for the international community to assist troubled states restore peace and stability hence prevents potential conflict that would have produced refugees. This chapter traces the history of the refugee regime from the 1950's in order to articulate the need for a shift in policy and practice to address the refugee crises in the 21st century.

The 1951 UN Convention was the blue print of the refugee instruments that were developed in the years that followed. It defines as any person 'who, owing to a well-founded fear of being persecuted for reason 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 the country'.⁷⁹⁴ Massive displacement of thousands and millions of people as a result of conflict has made it almost impossible for host states to welcome them. While refugee law condemns denial of entry for an asylum seeker in danger of persecution, its implementation is problematic when it involves the masses.

⁷⁹⁴ The 1951 UN Convention Relating to Status of Refugees, 28th July 1958, United Nations Treaty, vol.189 No.2545.p.137.



A photograph showing Syrian refugees entering Iraq on 15th August 2013. Available at <https://www.timesofisrael.com/halt-abuse-of-syrian-refugees-rights-group-urges-cairo/> [Accessed 24th April, 2018].

A similar photo was used by The United Kingdom Independent Party (UKIP) during the Brexit campaign in order to convince the electorate to leave the European Union (EU). The leave campaign won, effectively paving way for pulling the UK out of the EU.

Although at the time of writing, the United Kingdom had not officially left the European Union, the government had triggered Article 50 and the withdrawal date was set for March 29th 2019. In the final weeks up to the March deadline, Parliament had reconfirmed that it intended to leave the European Union and parliamentarians voted for a short extension to finalise the terms of this withdrawal in the House of Commons.

Critics view the refugee definition as envisaged by the 1951 UN Convention above as limited in scope as it overlooks other reasons that may necessitate forced migration, such as socio-economic rights abuses. For example, Hyndman⁷⁹⁵ argues that it was intended to apply primarily to refugees in post WWII Europe. Significantly, the 1951 Convention had minimized social and economic reasons for flight in determining the definition of a refugee, factors that may be more relevant in refugee-producing countries today than they were in post-war Europe. In Africa, for example, drought and famine may cause a mass exodus of economic” refugees as it happened in the 2011/2012 famine⁷⁹⁶ that forced 150,000 Somalis to flee to Kenya, and whom became refugees in Dadaab. The 1951 definition is therefore limited in scope as it did not contemplate anything beyond a direct fear of persecution as reasons for one to flee.

⁷⁹⁵ Hyndman, J., *Managing Displacement: Refugees and the Politics of Humanitarianism* Minneapolis, University of Minnesota Press, 2000, p.8.

⁷⁹⁶ Refugee Consortium of Kenya, *Asylum Under Threat: Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor*, 2012.

Apart from conflicts as a major contributor to forced migration, economic and social factors today contribute significantly to the number of world refugees. Many African and Syrian refugees who have fled to Europe in the recent past are perceived by the West as economic migrants whose flight may not have been justified by the conflict in their home countries. European Union (EU) Vice President Frans Timmermans supports this view and asserts that, 'More than half of the people now coming to Europe come from countries where you can assume they have no reason whatsoever to ask for refugee status...more than half, 60 per cent'.⁷⁹⁷ His claim is informed by the fact that many migrants are from peaceful countries in North Africa such as Morocco and Tunisia.

Economic migrants have become a serious political issue to the EU that has led many to believe it may have contributed greatly to the success of the Brexit campaigns in July 2016. The UK Independent Party took advantage of the influx of refugees to the EU as a tool to convince Britons to vote to leave the EU (apparently to gain more control of their borders and prevent the threats that may be posed by migrants from Africa and the Middle East). While some criticized the UKIP poster on immigrants terming it 'racist' and equated it to the then Nazi⁷⁹⁸ campaigns in Germany, others viewed it as a genuine

⁷⁹⁷ Worley, W., 'Six out of 10 migrants to Europe come for 'economic reasons' and are not refugees, EU Vice President Frans Timmermans says', 27th January, 2016. www.independent.co.uk/news/world/europe/six-out-of-10-migrants-to-europe-come-for-economic-reasons-and-are-not-refugees-eu-vice-president-a6836306.html [Accessed on 20th January 2017]

⁷⁹⁸ Nazi is the common English term for values like those expressed under the Nazi regime in Germany German history from 1933 to 1945. Racism, especially anti-Semitism, was a central feature of the regime. It advocated for ethnic cleansing that claimed the lives of up to six million Jews. See Goebbels, J., 'Nazi Party', <http://www.history.com/topics/world-war-ii/nazi-party> [Accessed on 20th January 2017]

concern about the thousands of refugees heading to Europe, estimated to have reached one million⁷⁹⁹ by the end of 2015.

According to USA president Donald Trump for instance, 'If they [EU countries] hadn't been forced to take in all of the refugees, so many, with all the problems it entails, I think that you wouldn't have Brexit.'⁸⁰⁰ By supporting approximately a million refugees to enter the EU, Donald Trump argued that the German Chancellor Angela Merkel 'Made one very catastrophic mistake and that was taking all these illegals.'⁸⁰¹ As soon as he assumed power in early 2017, Donald Trump temporarily suspended Muslims from seven countries⁸⁰² from entering the USA, a move that was widely criticized. President Trump was trying to tighten USA borders from refugees and illegal immigrants, especially from Muslim countries that he considered 'terror-prone' hence required 'extreme-vetting' before entry. Like their counterparts in other parts of the globe, the EU is no longer receptive to thousands of refugees who complicate the already complex domestic issues especially unemployment, increasing threats of terrorist attacks among others.

⁷⁹⁹Truth Revolt, 'More than 1 Million Migrants Arrive in Europe During 2015', 22nd December 2015, <https://www.truthrevolt.org/news/more-1-million-migrants-arrive-europe-during-2015> [Accessed on 20th January 2017]

⁸⁰⁰Mr. Trump was quoted as saying this while being interviewed by former UK Justice Secretary Michel Gove for The Times and Bild's Kai Diekmann, See 'Donald Trump says Merkel made 'catastrophic mistake' on migrants', 16th January 2017.

Available at www.bbc.com/news/world-us-canada-38632485 [Accessed on 20th January 2017]

⁸⁰¹ Available at www.bbc.com/news/world-us-canada-38632485 [Accessed on 20th January 2017]

⁸⁰²D. Merica, 'Trump signs executive order to keep out 'radical Islamic terrorists'', 30th January, 2017, Available at <http://edition.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/> [Accessed on 1st February 2017].

Issues of immigrants also featured strongly in the 2016 USA elections, an indication of a desire for a more restrictive approach, globally, towards migrants and asylum seekers. The Geneva Convention of 1951, no doubt, never contemplated such a continuously complex refugee crisis that requires a delicate balance between humanitarian concerns and the political, economic and social complexities brought about by hosting thousands of refugees. Strong anti-immigrant sentiments by newly elected USA president, Donald Trump, are an indication of the growing apathy towards refugees among the world's peoples. While in theory many perceived his sentiments as contemptuous to the immigrants, the surprising support he marshaled during the USA elections is an indication that he spoke to the pressing needs of a significant number of people in the USA, including touching upon their perceptions of immigration.

The 1951 United Nations Convention Relating to the Status of Refugees was focused on millions of refugees, who, at the time, had been displaced by the Second World War that had ravaged Europe between 1939 and 1945. Many countries at the time sympathized and empathized with the refugees hence many got a warm reception in their countries of refuge. Though refugees were received well in their countries of asylum in the late 1940's and partly 1950's, this willingness was short-lived and it soon faded away with prolonged stays. Host countries from the last quarter of the 20th century have become reluctant to host refugees because of the fear that the refugees are no longer seen as a

short-term challenge. The unquestionable assumption in the 1940's was that refugees were in their host countries temporarily and that they would go back to their home countries as soon as the Second World War ended.⁸⁰³ As a result they received immense sympathy. For instance, when Palestinian refugees began flooding into neighbouring Arab states as of spring of 1948 they received a warm welcome. The prolonged refugee stay however put undue strain on already fragile economies and attitudes in the host countries began to shift.⁸⁰⁴As a result, the earlier responses of sincere hospitality and sympathy⁸⁰⁵ to refugees were soon replaced by negative perceptions such as suspicion, mistrust and general bad-mouthing and othering of refugees..

It is clear that over time refugees no longer receive the warm welcome they enjoyed in the 1940s. Because the UN refugee regime has not evolved to capture the harsh refugee realities of the 21st century, many host states have been grappling to implement this refugee legislation. The provision in the refugee regime that require states to open their borders for asylum seekers has been violated by many states. The fact that most host states are reluctant to receive asylum seekers is an indication that the 1951 UN Convention regarding refugees is no longer tenable and has been overtaken by time. The 1951 Convention did not envisage protracted refugee situations where millions would be displaced and exiled for decades.

⁸⁰³ O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170.

⁸⁰⁴ O. El-Abed, *Unprotected Palestinians in Egypt since 1948*. Ontario: Co-Published by Institute for Palestinian Studies, Washington DC and International Development Research Centre Ottawa, 2009, p.170.

⁸⁰⁵J. Oloka, et al, *Popular Justice and Resistance Committee Courts in Uganda*, Friedrich-Ebert Stiftung, 1994.

According to the UNHCR:

The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement.⁸⁰⁶

This therefore implies that voluntariness must result from 'an absence of any physical, psychological or material pressure'⁸⁰⁷. Accordingly; datelines issued by the Government of Kenya on the closure of Dadaab camps may be interpreted, under the Convention, to amount to pressure on refugees, hence making the repatriation involuntary.

The protracted nature of the refugee situations especially in Africa and the Middle East has raised issues of refugee burden sharing by the international community. While the refugee regime generally envisages that the international community should support the refugee hosting states in order to lessen their burden, its implementation has been poor as it is guided by the goodwill of the international community. Bearing in mind that states give their national interests the first priority, many refugee host states have complained of the dwindling international support to cushion them from the adverse effects of hosting refugees. Kenya, for instance, cited both security concerns and the economic burden of hosting refugees as key reasons it was closing down Dadaab refugee camps in

⁸⁰⁶UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.3.

⁸⁰⁷UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.3.

northeastern Kenya.⁸⁰⁸ Kenya insists that the international support has been insufficient and faults the global community over Kenya's refugee burden.⁸⁰⁹ Defending Kenya's decision to close Dadaab refugee camps, Kenya's Deputy President (while addressing UNGA) lamented that, 'As we assemble here today, 86% of the world's 22 million forced migrants and refugees are hosted in 10 developing countries...nothing can better demonstrate the failure of international burden-sharing than this reality...the framework designed to respond to human distress has become ineffectual'.⁸¹⁰ Even though the Deputy President fell short of calling for a review of the refugee regime, his frustrations were as a result of an outdated refugee regime that can no longer address emerging and protracted refugee situations.

One way of managing the refugee crises will therefore involve a review or total overhaul of the refugee regime in order to allow for legal protocols that many host states will be able to implement without impacting their national interests, whether they be security related or socio-economic. Indeed, one would ask: what is the essence of having international law that cannot be carried out because it is not pragmatic? This is crucial because, in the long run, host states are only to observe international obligations,

⁸⁰⁸ G. Andae, 'Kenya to close refugee camps despite Obama, UN pleas', 11th May, 2016, www.businessdailyafrica.com/Kenya-to-close-refugee-camps/539546-3199564-o9dbj1z/index.html [Accessed on 25th November 2016]

⁸⁰⁹ Deputy President Press Service, 'Ruto faults global community over Kenya's refugee burden', *Daily Nation*, Available at: <https://www.nation.co.ke/news/Kenya-faults-rich-nations-over-refugee-crisis/1056-3387248-151hgnq/index.html> [Accessed on 25th November 2016]

⁸¹⁰ DPPS, 'Ruto faults global community over Kenya's refugee burden', *Daily Nation* www.nation.co.ke/news/Kenya-faults-rich-nations-over-refugee-crisis/1056-3387248-151hgnq/ [Accessed on 25th November 2016]

including that of hosting refugees, through their good will and not necessarily by rigid legislative coercion.

The refugee regime has consequently been domesticated to varying degrees by host states to the extent that it has remained a mere regulation, with no serious consequences to those perceived to be going against the convention. International law and protocols pertaining to refugees has lost its legal rigour, as many host states finds themselves unable to comply with it because of mass refugees that complicate domestic interests.

6.1.1 The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

The Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional instrument adopted by the OAU in 1969, expands the UN definition of a refugee to include people fleeing external aggression, internal civil strife, or events seriously disturbing the public order in African countries. Unlike the 1951 UN Convention, the OAU Refugee Convention is a legally binding instrument that explicitly covers the substance of voluntary repatriation. According to the convention, 'the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.'⁸¹¹Despite this and like many other international laws and protocols, its implementation is subject to national legislation and may be overlooked

⁸¹¹O.A.U Convention Governing the Specific Aspects of Refugee Protection in Africa, OAU Convention, 1969, Art. 5 (1).

especially when it is perceived to be contrary to the national interests of a particular host state. National legislation concerning refugees has also overshadowed what is envisaged in the 1969 OAU Refugee Convention. Consequently, refugee matters are increasingly being interpreted according to domestic refugee jurisdictions and not necessarily those of international or regional refugee instruments.

Unlike the 1951 Convention, The Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 seem to have been formulated with a view to protecting the various political asylum seekers who at the time were fleeing the brutal colonial governments that were pursuing them. While a number of African countries had attained independence at the time, many were still struggling to attain full independence, and some were still under Portuguese rule⁸¹². Hence, there was a need by the newly independent African states to protect political asylum seekers from colonial and post-colonial regimes in other African countries. In due course however, all African states were politically independent.

⁸¹² Countries such as [Kongo, the Coastal States of West Central Africa](#), [Angola](#), [Mozambique](#), and [Guinea Bissau](#) were yet to attain political independence. See N. MarQueen, 'Portuguese colonial rule', 6th May, 2016, Oxford Biographies. Available at <http://www.oxfordbibliographies.com/view/document/obo-9780199846733/obo-9780199846733-0058.xml> [Accessed 24th April, 2018]

In the meantime, former French colonies had limited independence as they were considered part of France in the 'French department system'. The Structural Adjustment Programmes that followed in the 1980's meant that African countries were not fully independent after all.

J. Barry Riddell , 'Things Fall Apart Again: Structural Adjustment Programmes in Sub-Saharan Africa', *The Journal of Modern African Studies*, Vol. 30, No. 1,1992, pp. 53-68

Interestingly, independence of many African countries brought along a new kind of conflict as various factions wrangled for power within and externally through Cold War proxy wars. As a result, thousands of people were displaced and many sought asylum in exile. This trend has continued to bedevil Africa with unprecedented millions being displaced and forced to seek asylum in other African countries, Europe and even America. Although modernization⁸¹³ theorists attributed the conflict to weak governance structures, postcolonial theorists⁸¹⁴ claim that weak governance is also a product of the external intervention in the post-colonial period – and the propping up of states by the West, many of which were dictatorial states because they were useful Cold War proxies.

Supported by the West or East, African colonial leaders that led the liberation struggle soon found themselves at the seat of power and unleashed the same brutal force to their antagonists who dared challenge their ideologies or actions. Proxy wars during the Cold War and neocolonialism in general has contributed to poor leadership in Africa. Consequently, Africa has continued to be the one major single source of refugees either fleeing civil war, famine, extreme poverty and most recently post-election related violence.

⁸¹³ J. Matunhu, A critique of modernization and dependency theories in Africa: Critical assessment *African Journal of History and Culture* Vol. 3, no.5, pp. 65-72, June 2011 Available online at <http://www.academicjournals.org/AJHC>

⁸¹⁴J. Matunhu, A critique of modernization and dependency theories in Africa: Critical assessment *African Journal of History and Culture* Vol. 3, no.5, pp. 65-72, June 2011 Available online at <http://www.academicjournals.org/AJHC>

While the provisions of the OAU Convention are to some degree comprehensive their implementation is largely dependent on the good-will of individual states. Moreover, many African countries although willing to host refugees, lack the capacity to do so as many are poor countries that can hardly meet the basic needs of their population. The dynamics of individual refugee situations, the nature and extent of conflict, the interests of the state of origin, the interests of the host state and those of the international organizations led by the UN refugee agency influence the manner and the processes involved in the implementation of the repatriation provisions. Compromise is therefore common with all parties lobbying in order to protect their interests as far as possible.

6.2 From plight to reasons for the flight: the need to address broader root causes

Although an updated refugee regime is necessary to tackle emerging issues pertaining to refugees in the 21st century, especially regarding how to handle protracted refugee situations, its implementation is largely dependent on the goodwill of individual states. With many states adopting more restrictive policies towards refugees, it appears a more sustainable way to prevent refugee crises is to channel available resources towards addressing the reasons for the flight of refugees from their home countries. This is paramount considering that it is virtually impossible to sustainably address the plight of refugees while in asylum as this is dependent on the donor community and the host state.

All efforts should be geared towards preventing situations that are likely to generate refugees by addressing those problems before they are out of hand. Regrettably, most of

the conflict situations that have produced millions of refugees were left to spiral out of control as the international community watched as thousands were uprooted. The case of the Rwandan genocide⁸¹⁵ is classical example of too late intervention by the international community. In fact it took until 2009 for the UN to admit its failure⁸¹⁶ to intervene. While the international community is not entirely to blame for domestic conflicts, they could do more in terms of intervention. It appears there is a general perception among members of the international community that such conflicts will resolve themselves. States experiencing conflict, under the guise of promoting and/or protecting their sovereignty, have argued states should be allowed to solve their own internal problems. In some instances, where economic policies of the international community towards African states is a cause of conflict and forced migration, there is no credible intervention to be expected from the international community, and particularly from states that benefit from the African economy. Such states would argue, in a similar terminology to that of modernization theorists that African states should therefore focus on how to address their problems that may be the cause of conflict and forced migration, and stop blaming the international community for a lack of intervention.

While direct intervention may not be the best option in most cases, the international community can still do a lot to prevent conflicts from degenerating into civil wars or even

⁸¹⁵ F. Reyntjens, 'Rwanda: Genocide and beyond', *Journal of Refugee Studies*, Volume 9, Issue 3, 1 September 1996, Pages 240-251, <https://doi.org/10.1093/jrs/9.3.240>[Accessed 24th April, 2018]

⁸¹⁶Deutsche Welle, 'Rwanda: Why the international community looked away', 7th April, 2009 <http://www.dw.com/en/rwanda-why-the-international-community-looked-away/a-4157229>[Accessed 24th April, 2018]

prevent inter-state conflicts that may end up generating millions of refugees as the case of Rwanda. Indeed the UN's Peace Building Commission has done a lot in strengthening sustainable peace in disturbed regions and in promoting sustained and predictable financing to promote peace.⁸¹⁷The UN's Peace Building Commission has also sought to strengthen partnerships so as to have a comprehensive approach in peacebuilding.⁸¹⁸

There is no better way of promoting repatriation than through restoration, by restoring all or at least some of the privileges, rights and services enjoyed by the refugees prior to their displacement. This forms part of restorative justice.

Restorative Justice Council⁸¹⁹ defines restorative justice as a system that 'brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward'⁸²⁰.In the criminal justice system restorative practice can be used anywhere to prevent conflict, build relationships and repair harm by

⁸¹⁷UN, 'Peacebuilding Commission Informal Meeting on the preparations for the High-level meeting on peacebuilding and sustaining peace', 8th March 2018. Available at <http://www.un.org/en/peacebuilding/pdf/oc/Chair%20Summary-informal%20OC%20meeting%20-%208%20March%202018.pdf> [Accessed 24th April, 2018]

⁸¹⁸UN, 'Peacebuilding Commission Informal Meeting on the preparations for the High-level meeting on peacebuilding and sustaining peace', 8th March 2018. Available at <http://www.un.org/en/peacebuilding/pdf/oc/Chair%20Summary-informal%20OC%20meeting%20-%208%20March%202018.pdf> [Accessed 24th April, 2018]

⁸¹⁹The Restorative Justice Council is the independent third sector membership body for the field of restorative practice. See <https://restorativejustice.org.uk/about-rjc> [Accessed 24th April, 2018]

⁸²⁰Restorative Justice Council, 'What is restorative justice?', Available at <https://restorativejustice.org.uk/what-restorative-justice> [Accessed 24th April, 2018]

enabling people to communicate effectively and positively.⁸²¹Returnees who find a workable restorative system at home upon return are likely to rehabilitate easily to the community at home. This also reduces the likelihood that they will flee again. Restoration of these rights and services therefore acts as pull factors that motivate the refugees to return to their home countries voluntarily. It is the hope of a bright future at home that should pull refugees to their home countries.

On the other hand, as pointed out by the UNHCR Handbook,

If... their [refugee] rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will. As a general rule, UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country.⁸²²

The only acceptable pull factors at home should be positive. Negative pull factors at home, such as threats to property or rights, or abuse of relatives, may force refugees to repatriate it is hardly voluntary. Negative pull factors at home and adverse push factors in exile both lead to premature repatriation. For sustained repatriation, refugees must be informed of the restored rule of law and the ability to enjoy their rights as they did prior to the conflict.

⁸²¹ Restorative Justice Council , 'What is restorative justice?', Available at <https://restorativejustice.org.uk/what-restorative-justice>[Accessed 24th April, 2018]

⁸²²UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.3.

Addressing the reasons for the flight of thousands of Somali refugees is a long and complex process. Indeed, it is naive for anyone to assume that state building in Somalia is an easy task even with the necessary international support. Menkhaus, while writing on 'Governance without Government' in Somalia has, for instance, argued that the prolonged and complete collapse of Somalia's central government has produced a uniquely difficult context for state revival.⁸²³ This is because, according to him, delayed external action to revive and support failing states only compounds the difficulty of state building later on. Indeed, states that have remained stateless for a relatively prolonged period of time find it difficult to reconstruct the state machinery-it is like trying to reconstruct an unsecured crime scene that has been abandoned for a long time with potential evidence watered down by time and space. This is perhaps why the Somalia Conference held in May 2013⁸²⁴expressed its commitment to support Somalia in its continuing transition towards peace and stability but acknowledged, on the other hand too, that many challenges remained, and in particular those concerned with security, governance, human rights, displacement and development.⁸²⁵One factor which may prevent refugee repatriation from becoming a durable solution after prolonged stays in

⁸²³K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, vol.31, no.3, 2007, pp.74-106

⁸²⁴ The Governments of the UK and Somalia co-hosted an international conference on Somalia on 7 May 2013 in the UK. The conference took place to provide international support for the Government of Somalia as they rebuild their country after two decades of conflict. Available at <https://www.gov.uk/government/topical-events/somalia-conference-2013>[Accessed 24th April, 2018]

⁸²⁵United Kingdom Government (Foreign & Commonwealth Office, Department for International Development and Prime

Minister's Office), *The International Somalia Conference Final Communiqué*, 7 May 2013, <https://www.gov.uk/government/news/somalia-conference-2013-communicue>. [Accessed 4th May, 2016]

exile is that refugees discover upon repatriation that their homeland has changed.⁸²⁶ Changes which may have taken place in the homeland during the period in which these refugees were in exile can cause refugees not to feel at home in their country of origin, and lead them to forsake⁸²⁷ their repatriation. Many years of exile therefore make state rebuilding, which includes the return of asylum seekers to a country of origin, a difficult process. The protracted conflict in Somalia and the subsequent prolonged stays of refugees in exile is one such case. The need to address the root causes of the conflict more proactively is paramount in order to avoid superficial, reactive remedies that cannot stand the test of time.

Research has indicated that safety is not all that returnees need, despite the emphasis upon this by hosts. For example, simply removing the root causes of flight may not be sufficient to promote repatriation, since decisions can be informed by broader considerations⁸²⁸. Should Somalia be safe for return may not in itself be a sufficient reason for one to return because refugees consider broader issues like the standard of living, access to land, education and healthcare.⁸²⁹ Other safety considerations, apart from the overemphasized political security, are also crucial for refugees' return. There is a false

⁸²⁶ D. Warner, 'Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics', *Journal of Refugee Studies*, vol.7.no.2/3, 1994, p169.

⁸²⁷ D. Warner, 'Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics', *Journal of Refugee Studies*, vol.7.no.2/3, 1994, p171.

⁸²⁸ K. Koser, 'Information and repatriation: The case of Mozambican refugees in Malawi', *Journal of Refugee Studies*, Refugee Studies Centre, University of Oxford, vol.10, no.1, 1997, pp.1-17.

⁸²⁹ Interview with Ibrahim Ali, 40, at Dadaab UNHCR compound on 22nd October 2016.

separation in the considerations promoted. It seems that a greater human security paradigm is needed, rather than one that just focuses on political security.

Others, still, may not be influenced by objective indicators of the quality of life at home and in exile but rather by their general perception of patriotism, nationalism and the desire for belonging. Addressing these broader issues play a big role in motivating refugees to return-after all many countries have their own security challenges.

Fixing broader issues that caused refugees to flee, though painstakingly complex and slow, is the only sustainable solution to the refugee problem. Many countries, however, tend to approach the refugee problem in a reactive manner hence offer superficial temporary solutions to a rather deep rooted problem. Regimes in home countries, for instance, might suggest that home is now safe for return in order to increase their legitimacy both at home and abroad without serious thought as to whether returnees will return in safety and dignity and live comfortably thereafter.

Host states on the other hand prefer to keep refugees in temporary shelters, mostly in tents and shanties, which disconnect them from the economic and political affairs of the host state. In the long run, host states fail to draw upon the potential human resource capacity of refugees, condemning them as burdens. While most host states exclude any possibility of integrating refugees, to their local population, this may prove uneconomical to the host state. This is because a lot of resources are channeled towards restricting and

monitoring refugee movement yet these refugees are not allowed to productively engage and contribute to the economy. Consequently, refugees contribute very little to the host state because of limited opportunities afforded them by host states.

Studies⁸³⁰ have also shown that many refugees want to settle where they can develop their full potential and did not necessarily have an overwhelming attachment to any particular place. To such refugees, what mattered was a dignified human life, wherever that may be. In this case what seem to matter is a dignified human life and not necessarily the idea of belonging to a nation state. In this regard, policy makers, state and non-state actors must strive to provide a conducive environment to allow return. Promoting an environment of such holistic growth helps attract returnees to their home nation state such as Somalia. Otherwise, asylum seekers in exile may not be attracted by the mere idea of wanting to belong to a nation state if that cannot guarantee a dignified life.

6.2.1 Promoting livelihoods (for returnees) in the state of origin as a catalyst for repatriation

The tenability of the current refugee regime particularly in dealing with millions of refugees has been put to question. Indeed, there is every possibility that if more resources

⁸³⁰J. Edward Taylor et al, 'Economic impact of refugees', *Proceedings of the National Academy of Sciences*, vol. 113, no.27, 2016. Available at <http://www.pnas.org/content/113/27/7449.full> [Accessed 24th April, 2018]

Alix-Garcia J, Saah D. *The effect of refugee inflows on host communities: Evidence from Tanzania*. *World Bank Econ Rev* vol.24, no.1 pp148–170

P, Legrain, 'Refugees are a great investment', 3rd February, 2017. Available at <http://foreignpolicy.com/2017/02/03/refugees-are-a-great-investment/> [Accessed 24th April 2018]

could be channeled to conflict prevention, and not just peace keeping, the millions of the refugees today may not have been so.

Conflict Prevention is the object of a wide range of policies and initiatives; its aim is to avoid the violent escalation of a dispute. According to John Hopkins School of Advanced International Studies conflict prevention includes:

- i) Monitoring and/or intervening to stabilize a potentially violent conflict before its outbreak by initiating activities that address the root causes as well as the triggers of a dispute.
- ii) Establishing mechanisms that detect early warning signs and record specific indicators that may help to predict impending violence.
- iii) Using planned coordination to prevent the creation of conflict when delivering humanitarian aid and in the process of development.
- iv) Institutionalizing the idea of preventing conflict at the local, regional, and international levels.⁸³¹

The UN peacekeeping on the other hand 'helps countries navigate the difficult path from conflict to peace'⁸³². Conflict prevention is prior to war and is deterrent in nature while peacekeeping focuses on restoring peace during the postwar period.

⁸³¹John Hopkins School of Advanced International Studies , ' Conflict Prevention', <https://www.sais-jhu.edu/content/conflict-prevention>, [Accessed 25th April, 2018]

The question is how many millions of dollars have been injected into Dadaab refugee camps by Kenya and the international community since its inception 27 years ago? Supposing these resources had, instead, been channeled towards conflict prevention in Somalia, could there have been better results? Could other means of conflict transformation work better other than military intervention? Answers to these critical questions are essential if conflict in Somalia and other parts of Africa is to be resolved and sustained. It appears time has come to rethink what the Foreign Affairs Cabinet Secretary of Kenya, Amina Mohamed, said as she challenged the UN member states and UNSC in New York to ‘...invest as much in conflict prevention mechanisms as in peace keeping, particularly in Africa where governance institutions are relatively weak.’⁸³³

A more immediate approach to the refugee problem should be to address the reasons for refugee flight, in order to create an environment that can sustain voluntary repatriation. Bearing in mind those years of conflict has destroyed peoples’ livelihoods and destroyed economic prospects for the same; economic reconstruction is paramount as a tool for sustained livelihood during and after repatriation. Appreciating that refugee numbers are on the rise, it is incumbent upon the refugee actors to try and address the underlying reasons that make repatriation difficult. One of them and possibly the main one, is the lack of sustainable livelihoods after repatriation.

⁸³²UN, ‘What peacekeeping does’, Available at <https://peacekeeping.un.org/en>[Accessed 25th April, 2018]

⁸³³ The Standard Reporter, ‘Invest More in Conflict prevention and Peace Keeping, Foreign Affairs CS Amina Mohamed Urges UN’, <http://www.standardmedia.co.ke/article/2000216975/invest-more-in-conflict-prevention-cs-amina-urges-un> [Accessed on 22/09/2016]

In Somalia, the famine between 2009 and 2011 forced thousands of Somali to flee to Kenya. While they were registered as refugees, the cause of their flight was drought and famine and they sought survival in Dadaab refugee camps where the UNHCR, WFP and other agencies distribute food rations. Promoting sustainable livelihoods in Somalia is therefore paramount for the survival of the returnees whose lives are not only endangered by physical insecurity caused by the militias, but also by a lack of food, shelter, clothing and the general socio-economic security required for a dignified life.

The recent attempts by the UN to increase its funding for the United Nations Peace Building Fund (UNPBF) in Somalia is therefore a step in the right direction and needs to be intensified and expanded. The UNPBF is the Secretary General's Fund, 'launched in 2006 to support activities, actions, programmes and organizations that seek to build a lasting peace in countries emerging from conflict'⁸³⁴. Announcing a \$3 million to Somalia-Kenya border pilot project for Somali refugees, the Fund noted that the project was unique as it reaches across borders and targets the same population, first in asylum in Dadaab, Kenya, and then upon return to Baidoa, Somalia.⁸³⁵The initiative, according to the Fund, is designed to promote coexistence and peaceful resolution of conflict in Somalia, in addition to supporting the Government's priorities for stabilization and peaceful dividends, including investment in jobs⁸³⁶.

⁸³⁴UNPBF, 'Who we are', Available at <http://www.unpbf.org/who-we-are/> [Accessed 25th April, 2018]

⁸³⁵ UN, 'UN allocates \$ 3 million to Somalia-Kenya cross-border pilot project for Somali refugees', www.un.org/apps/news/story.asp?NewsID=55861 [Accessed on 28 December 2016]

⁸³⁶ UN, 'UN allocates \$ 3 million to Somalia-Kenya cross-border pilot project for Somali refugees', www.un.org/apps/news/story.asp?NewsID=55861 [Accessed on 28 December 2016]

While the idea of channeling resources to create livelihoods in conflict zones is challenging, it is the only tenable way to prevent economic migrants and to convince the refugees to repatriate. It is not surprising therefore that recently Germany has suggested a form of Marshall Plan for Africa to solve the refugee crisis that now directly affects Europe. The plan would involve a massive economic boost to African nations to create jobs and slow the flow of refugees into Europe.⁸³⁷ Others have clearly indicated that migrants are not welcome in Europe and that, 'The solution is peace...and the return of migrants to their homes.'⁸³⁸ While critics will be quick to suggest that this is bound to fail as it works on a premise that asylum seekers fleeing to Europe are economic migrants, which is always not the case, its implications could be positive. Such a plan could encourage refugees to return to their home countries, and if peace-building and economic recovery was seriously addressed could help in transforming various conflicts that relate to struggles over resources and economic survival⁸³⁹.

Attempts to promote livelihoods in post conflict zones, though a noble idea may face resistance from those benefitting from the conflict in terms of resources. Beneficiaries of

⁸³⁷ The Marshall Plan was the USA investment into Western Europe in the aftermath of World War II. Germany has suggested a form of 'Marshall Plan for Africa' in a bid to boost Africa's economy hence reduce the flow of economic migrants to Europe. www.rt.com/news/366524-germany-marshall-plan-africa/

⁸³⁸ Reuters, 'Czech finance minister says 'no place' for migrants in Europe' 20th December, 2016. He was reacting to an attack on Berlin Christmas market that he blamed on migrants and that Germany was 'paying a high price on this policy'. He was referring to an open policy towards refugees advocated for by German Chancellor Angela Merkel. Available at www.reuters.com/article/us-germany-truck-czech-basis-idUSKBN149226?feedType=RSS&feedNme=worldNews&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+Reuters%2FworldNews+%28Reuters+world+News%29 [Accessed 27th December 2016]

⁸³⁹ S. Ghali Ibrahim, S. Abba, and F. Bibi, 'Resource based conflicts and political instability in Africa: Major trends, challenges and prospects', *International Journal of Humanities Social Sciences and Education*, Vol.1, no. 9, 2014, pp 71-78

resources during conflict are normally domestic politico-economic networks working in conjunction with international actors such as multinational corporations⁸⁴⁰ and western states. Western states, while protecting their economic interests, have been accused of supporting regime change.⁸⁴¹ American interests⁸⁴² in oil in Libya contributed to the fall of the Gaddafi regime led by the USA and her allies. The French too have been blamed for the bloody war in Mali.⁸⁴³ Western states and multinationals control massive resources in Africa and can easily manipulate Africa governments. Economic resources are normally used by those wielding power as a tool to command respect and power. Consequently, western states may not agree with autonomous economic decisions that may not be in their interests, even when they might promote livelihoods in post conflict zones. Through propaganda, those in power may propagate the narrative that such foreign financial support, though meant to promote livelihoods, as a means through which donors, mostly foreign, interfere with internal affairs of a state hence negate the essence of such programmes. To promote the chances of success in socio-economic boost s, there is need for consultation to ensure that the initiated projects are community driven so as to encourage a sense of belonging and ownership. There is therefore need to lobby all the

⁸⁴⁰Multinational corporations, Available at <https://www.britannica.com/topic/multinational-corporation>[Accessed 25th April, 2018]

⁸⁴¹M. Zhira, 'Review: Presidential Regime-Change and Continuity in Africa', *Journal of Southern African Studies* Vol. 36, No. 1 , 2010, pp. 241-245

⁸⁴²S. Mufson, 'Conflict in Libya: U.S. oil companies sit on sidelines as Gaddafi maintains hold', *Washington Post*, 10th June, 2011. Available https://www.washingtonpost.com/business/economy/conflict-in-libya-us-oil-companies-sit-on-sidelines-as-gaddafi-maintains-hold/2011/06/03/AGJq2QPH_story.html?noredirect=on&utm_term=.1f6bbe2e7023

⁸⁴³Deutsche Welle, 'The interests behind France's intervention in Mali', Available at <http://www.dw.com/en/the-interests-behind-frances-intervention-in-mali/a-16523792>[Accessed 25th April, 2018]

stakeholders involved to see to it that economic stimulus programmes achieve the desired objective-that of promoting peace and reconstruction in post war periods.

6.2.2 Strengthening governance structures

Clanism⁸⁴⁴ and the subsequent weak governance institutions⁸⁴⁵also contributed to civil war in Somalia in 1991 and the resultant forced migration of refugees. Until these clanism issues are resolved and political institutions are re-built and institutionalised, many refugees in Dadaab expressed a fear of returning. This is because they might not be able to enjoy the protection of the state, either because the state is unwilling or is too weak to offer such protection. Functional state institutions guarantee the protection of life and the general protection of human rights. With militias and clan factions threatening the establishment of these state institutions, many will still be reluctant to return and reconstruct Somalia for fear of being oppressed and exploited by these militias⁸⁴⁶ that are known to deploy brutal force against their targets. Many militia groups target government officials and installations.⁸⁴⁷They may also target civilians especially those thought to be supporting government ideology.

⁸⁴⁴A. Kusow, 'The Genesis of the Somali Civil War: A New Perspective', *Northeast African Studies*, Michigan State University, vol 1.no1, 1994,pp31-46

⁸⁴⁵ K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, vol.31, no.3, 2007, pp.74-106

A. Kusow, 'The Genesis of the Somali Civil War: A New Perspective', *Northeast African Studies*, Michigan State University, vol. 1.no1, 1994,pp31-46

⁸⁴⁶ There are several militia groups in Somalia and have kept on evolving over time. Examples include Union of Islamic Courts, Al Shabaab among others. See L. Makhubela, 'Understanding civil militia groups in Somalia', 16th August 2016. Available at <http://www.accord.org.za/conflict-trends/understanding-civil-militia-groups-somalia/> [Accessed 25th April, 2018]

⁸⁴⁷K. Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping', *International Security*, vol.31, no.3, 2007, pp.74-106

In Dadaab, for instance, refugees who were reluctant to take up the organized repatriation package from the UNHCR cited the fact that Somalia is still unsafe for return. One refugee in Hagadera wondered why he should even think of repatriation when, 'There are many reported security incidences in Somalia perpetrated by the Al Shabaab militia. Didn't you people hear of the Al Shabbab El-Ade attack that killed many Kenyan soldiers? Al Shabaab kill and maim on a daily basis...I don't want to die.'⁸⁴⁸ The El-Ade attack has been termed as the worst military loss for Kenya. Many of those interviewed cite insecurity as the main reason they cannot voluntarily repatriate. Considering that Dadaab camps have been in existence since 1991, and the conflict in Somalia continues to date, it is only conceivable that repatriation will only be possible once peace is restored. In this case, the international community through UN bodies such as UNSC and UNPBF should intervene and implement their programmes. Indeed the mandate of UNPBF if implemented fully could go a long way in resolving conflicts and restoring peace. According to UNPBF, they fund:

(i) Activities designed to respond to imminent threats to the peace process, support for the implementation of peace agreements and political dialogue, in particular in relation to strengthening of national institutions and processes set up under those agreements;

See L. Makhubela, 'Understanding civil militia groups in Somalia', 16th August 2016. Available at <http://www.accord.org.za/conflict-trends/understanding-civil-militia-groups-somalia/> [Accessed 25th April, 2018]

⁸⁴⁸ Interview with refugee, Habibo , in Hagadera camp 22 August 2016.

- (ii) Activities undertaken to build and/or strengthen national capacities to promote coexistence and peaceful resolution of conflict and to carry out peacebuilding activities;
- (iii) Activities undertaken in support of efforts to revitalize the economy and generate immediate peace dividends for the population at large;
- (iv) Establishment or re-establishment of essential administrative services and related human and technical capacities which may include, in exceptional circumstances and over a limited period of time, the payment of civil service salaries and other recurrent costs⁸⁴⁹.

Programmes such as those of UNPBF above could go a long way in restoring peace. It only needs a partnership and goodwill from all stakeholders for successful implementation.

Several institutions within Somalia need to be strengthened. These include the state security apparatus such as the Somali Police Force (SPF)⁸⁵⁰ and the Somali National Armed Forces (SNAF)⁸⁵¹ in order to increase their capacity to maintain law and order in post-conflict Somalia. UNSC's call to strengthen the SPF and the SNAF so as to increase

⁸⁴⁹UNPBF, 'What we fund', <http://www.unpbf.org/what-we-fund/> [Accessed 25th April, 2018].

⁸⁵⁰ SPF is the national police force and the main civil law enforcement agency of Somalia. As with most other police forces in the world, its duties include crime fighting, traffic control, maintaining public safety, and counter-terrorism. See <http://amisom-au.org/2018/01/amisom-to-intensify-training-of-somali-police-force-this-year/> [Accessed 25th April, 2018].

⁸⁵¹SNAF are military forces of Federal Republic of Somalia. Headed by the President as Commander in Chief, they are constitutionally mandated to ensure the nation's sovereignty, independence and territorial integrity

capacity⁸⁵² to prevent and counter terrorism has attracted the attention of many countries, particularly those bordering Somalia. The Government of Kenya for instance has called on the international community, specifically the EU and the USA ‘...to strengthen the police force of Somalia so that they can enforce peace while the national army is being strengthened.’⁸⁵³ The capacity of the National Intelligence and Security Agency (NISA)⁸⁵⁴ and the court system should also be increased in order to complement the work of SPF and SNAF through actionable intelligence and jurisprudence respectively.

Besides strengthening the state apparatus, any complaints by citizens of abuses by this security apparatus must be investigated with a view to reform the system to be more civilian centered and friendly. An Amnesty International report indicates that tension is rife between civilians and the SNAF. According to the report, informal checkpoints and roadblocks are used as a means to loot civilians in areas under the control of government or allied armed groups. On 26 January 2013, masked gunmen reportedly in SNAF military uniforms stopped two minibuses and robbed passengers.⁸⁵⁵ On 3 February 2013, gunmen in military uniforms stopped two minibuses and robbed the passengers of

⁸⁵²UNSC, Security Council 8215th Meeting, SC/13264, 27th March, 2018 Available at <https://www.un.org/press/en/2018/sc13264.doc.htm> [Accessed 25th April, 2018]

⁸⁵³ International Crisis Group, ‘Somalia: Transforming Hope into Stability’, 30th April, 2017, www.crisisgroup.org/africa/horn-africa/somalia/somalia-transforming-hope-stability [Accessed 29th January 2018]

⁸⁵⁴NISA is the national [intelligence agency](#) of the [Federal Republic of Somalia](#) is in-charge of secret service, intelligence and covert operations for the national interests of Somalia, The main objective of (NISA) is to collect the intelligence data through different means and to safeguard the national interests. See https://en.wikipedia.org/wiki/National_Intelligence_and_Security_Agency [Accessed 25th April 2018]

⁸⁵⁵UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, Annex 8.1, p 392.

money and possessions.⁸⁵⁶ Somali police have also been accused of using excessive force against civilians. An Amnesty International report cites a case of forced evictions by police, as narrated by one victim:

A government official, accompanied with a heavy police force and a van with 'AU police' written on it arrived at 7am. They began destroying shelters with the bulldozer, and hit anyone who tried to resist. They threatened they would take us to the police cells. I begged them not to destroy my shelter, we just accepted to collect our belongings and move.⁸⁵⁷

Excessive force by police during eviction, as in Waarberi district in the area of Majo camps, is rampant and has affected 2000 households and 200 orphaned children.⁸⁵⁸ Consequently, there is need to build trust among Somalis of the SPF and SNAF as they are reformed into a professional service. The government of the day through legitimate political institutions must earn the confidence of the people in order to distinguish itself from the Al Shabaab, who through their strict interpretation of the Sharia Law, are known for handing out harsh 'punishments' which are human rights abuses, such as public floggings and beheadings for those perceived to flout it.⁸⁵⁹

⁸⁵⁶UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, Annex 8.1, p 394.

⁸⁵⁷) <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> pg.43

⁸⁵⁸UNOCHA, Somalia Humanitarian Bulletin, October 2013.

⁸⁵⁹<http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> pg. 11

Even though some scholars like Rogge⁸⁶⁰ and Kibreab⁸⁶¹ agree that repatriation is the most preferred and feasible solution to the refugee problem, it is predicated upon the fact that peace will soon return to allow for repatriation to take place. However, most of the conflicts in the 21st century have been protracted and this has left thousands of refugees to continue waiting in host states. While repatriation is the most preferred solution to the refugee problem, it cannot take place unless sustainable peace is restored at the home countries.

Peace, however, should not be as a result of absence of violence but rather one that is positive.⁸⁶² According to Galtung, the inspiration behind the concept of positive peace was the health sciences, where health can be seen not merely as the absence of disease, but something more positive: making the body capable of resisting disease.⁸⁶³ Positive peace therefore requires building and strengthening the factors that foster peace.⁸⁶⁴ Indeed as Paul Lederach puts it, 'Peacebuilding requires a vision of relationship. Stated bluntly, if there is no capacity to imagine the canvas of mutual relationships and situate oneself as part of that historic and ever-evolving web, peacebuilding collapses'.⁸⁶⁵ Cordial

⁸⁶⁰ Rogge, J., 'Africa's Resettlement Strategies', *International Migration Review*, Vol. 15, No. 1, 1981, pp. 195-212.

⁸⁶¹ Kibreab, G., 'Citizenship Rights and Repatriation of Refugees', *International Migration Review*, New York, The Center for Migration Studies of New York Vol. 37, No. 1, 2003, pp.24-73.

⁸⁶² J. Galtung, 'An editorial', *Journal of Peace Research*, vol.1.no1.1964, pp1-4

⁸⁶³ J. Galtung, Twenty-five years of peace research: Ten challenges and some responses, *Journal of Peace Research*, vol.22.no.2, 1985, pp141-158

⁸⁶⁴ Y. Mahmoud, 'Freeing Prevention from Conflict: Investing in Sustaining Peace', IPI Global Observatory, April 21, 2016, available at

<https://theglobalobservatory.org/2016/04/prevention-sustaining-peace-hippo-ban-ki-moon/> [Accessed

⁸⁶⁵ P. Lederach, *The moral imagination: The art and soul of building peace*, Oxford, Oxford university, 2005, p.35

relationships between factions are thus critical in building lasting peace, as are structural transformations to build a positive sustainable peace.

Besides the conventional security systems like the police, military, prosecution and intelligence departments being strengthened, there is also need to complement these efforts with the traditional Somali system of conflict resolution. This is particularly important considering that although Somalia is ethnically homogenous; conflict between different factions has been intense especially at the clan level. It therefore indicates that the existing conventional systems of security and justice have not been sufficiently rooted in society to have legitimacy. Interviews⁸⁶⁶ show that Somali people in general and those holding radical Islamic views in particular indicate that punitive brutal force like neutralization through the military is counterproductive in deterring the militia's agenda. Indeed radical militia tend to fear being arrested, prosecuted and jailed and may prefer dying through military firepower instead. This explains why many voluntarily participate in suicide missions and die in the process. Perhaps the radical Islamic teaching on the benefits of dying a martyr has encouraged several Islamic *mujahidin*⁸⁶⁷, to fight to death. Military engagement in this case may not be effective and may in fact be counter-productive. Such radical views can never be fought militarily and an alternative narrative

⁸⁶⁶ Interviews/FGD's held at Dagahaley and Hagadera in Dadaab Refugee camps between 17th -25th November 2016. Many interviewees who wished not to be identified or quoted directly held the view that use of military power was counterproductive in defeating militants in Somalia.

⁸⁶⁷ Plural of mujahid, 'one who engages in jihad.' Often translated as 'warriors of God.' Technically, the term does not have a necessary connection with war. In recent years those Muslims who engage in armed defense of Muslim lands call themselves or are called mujahidin. See <http://www.oxfordislamicstudies.com/article/opr/t125/e1593>[Accessed 29th January 2018]

must, thus, be established to contest radical views that are intolerant and replace them with acceptable options that propagate peaceful co-existence.

Consequently, the professionalization of the state security apparatus must be acceptable to the Somali people so as to avoid being rejected on the basis of being foreign and alienated from the aspirations of Somali people⁸⁶⁸. Hence, the institutions of the state ought to be encouraged to work alongside religious leaders and elders and should seek consensus as much as possible. This way, political institutions will be legitimized by the majority of the population who will identify with and consider such structures as domestic and homegrown.

Despite UNHCR's concerted effort to promote voluntary repatriation, as it did in 1992, by declaring a repatriation decade⁸⁶⁹, unless protracted conflicts are solved, with the support of the international community, and potential conflicts deterred, the world could be witnessing at an unprecedented number of refugees in the 21st century.

6.2.3 Promoting social services

Besides security and safety concerns, refugees assess their ability to access education and social services and consider whether humanitarian services will be available upon return.

Asked why he was hesitant to repatriate to Somalia, one refugee cites the fact that 'There is no water, education and health services in Somalia'.⁸⁷⁰Concerns about access to

⁸⁶⁸K. Menkhaus, *After the Kenyan Intervention in Somalia*. The Enough Project Report, 2012, p.6

⁸⁶⁹ Stein B., Cuny F. and Reed P., *Refugee Repatriation during Conflict: a new conventional wisdom*, Papers from the CSSC conference in Addis Ababa, Ethiopia, October 1992, Centre for the Study of Societies in Crisis, Dallas, TX, 1995.

⁸⁷⁰ Interview with refugees Abdirahman and Maalim in Hagadera Camp, 22 November 2016.

education and healthcare were found to be critical among the youthful population interviewed in this study. A good number of these refugees were either born in Dadaab camps or came along with their parents/guardians when they were very young.

Somali returnees require a dignified life through access to basic services. Refugees repeatedly stressed in interviews that access to services was essential to enable them live a dignified life. Repatriation entails the restoration of meaningful citizenship, in which fundamental human rights are protected by the state or, in the context of a fragile state, perhaps communities.⁸⁷¹ In this context, repatriation ought to be considered and planned carefully, in conjunction with a broader peace-building and socio-economic development and services strategies that promote social welfare.

Access to education in Somalia is therefore essential if young adults and teenagers are to choose to repatriate. Moreover, many young adults fear that their many years of education in Kenya may prove fruitless upon return as they may fail to secure jobs. In addition, they expressed concern about a lack of opportunities for further education once they are in Somalia.

6.3.1 Military intervention in Somalia: Time to change strategy?

In a stateless society like Somalia, intervention is necessary to assist in state-building. State-building is the creation of new government institutions and the strengthening of

⁸⁷¹K. Long, *Home Alone? A Review of the Relationship between Repatriation, Mobility and Durable Solutions for Refugees*, Geneva, Policy development and evaluation service, UNHCR, 2010, p.40.

existing ones.⁸⁷²It is creating and strengthening the institutions necessary to support long-term economic, social, and political development.⁸⁷³In most cases state building is done by foreign powers although the possibility of benevolent state-building interventions by foreign powers has been questioned.⁸⁷⁴

Aware of the positive role of such interventions in the promotion of peace, militant groups in Somalia have vehemently opposed any form of foreign intervention-especially military intervention. The fact that there has been no sustained military victory in Somalia raises the question of the efficiency of military intervention in Somalia. Military engagement in Somalia has borne little fruit for the past 26 years.

For instance, various UN operations were launched periodically from 1992 to 1995 as part of this intervention. The first United Nations Operation in Somalia (UNOSOM I), launched in August 1992, was comprised of 500 Pakistani peacekeepers.⁸⁷⁵ Its main mandate was to monitor a ceasefire between warring factions in the capital, Mogadishu and to protect relief workers operating within Somalia following a humanitarian crisis caused by famine in the country. This UN operation, however, failed to meet its mandate

⁸⁷²F. Fukuyama, 'The imperative of state-building', *Journal of Democracy*, vol.15.no.2, 2004, pp 17-31

⁸⁷³Center for Global Development, 'State building and development', Available at https://www.cgdev.org/sites/default/files/2848_file_STATE_BUILDING1_0.pdf[Accessed 26th April, 2018]

⁸⁷⁴R. Myerson, 'Standards for state-building interventions', March 2012, University of Chicago, Available at <http://home.uchicago.edu/rmyerson/research/std4sb.pdf>[Accessed 26th April, 2018]

⁸⁷⁵Y. Alemu, *Causes and Consequences of Kenya's military intervention in Somalia*.MA Thesis, Addis Ababa University, 2014.

because of the strong resistance from warring factions⁸⁷⁶. This failure necessitated the formation of the Unified Task Force (UNITAF), the result of collaboration between UNOSOM I and the United States (US), in December 1992.⁸⁷⁷ This operation, which ran until 1993, was also referred to as Operation Restore Hope failed to restore hope in Somalia. The operation formed the basis for Somali resentment of the US as the country was viewed as having sided with one faction of the warring parties over the other during the operation.⁸⁷⁸ There were also a number of situations in which American helicopters fired on civilians in urban areas – leading to much greater resentment.⁸⁷⁹ In 1993, UNITAF was replaced by UNOSOM II, which operated until 1995 when it was withdrawn⁸⁸⁰ from Somalia.

In 2006, neighboring Ethiopia invaded Somalia⁸⁸¹, sending in its troops at the behest of then president of the Transitional Federal Government (TFG⁸⁸²) Abdullah Yusuf Ahmed,

⁸⁷⁶ Institute for Security Studies, Somalia: the intervention dilemma' Policy Brief no.20, August 2010.<https://www.africaportal.org/documents/3007/No20Aug2010Somalia.pdf>

⁸⁷⁷ Kenneth, A., *Somalia Operations: Lessons Learned*, CCR Publication Series, National Defense University, 1994

⁸⁷⁸ Y. Alemu, *Causes and Consequences of Kenya's military intervention in Somalia*. MA Thesis, Addis Ababa University, 2014.

⁸⁷⁹ M. Gordon and T. Friedman, 'Details of U.S. Raid in Somalia: Success So Near, a Loss So Deep', *New York Times* Available at <https://www.nytimes.com/1993/10/25/world/details-of-us-raid-in-somalia-success-so-near-a-loss-so-deep.html> [Accessed 27th April, 2018]

⁸⁸⁰ C. Chester, 'The Lessons of Somalia', *Foreign Affairs*, vol.74, 1995.

⁸⁸¹ Among reasons cited for Ethiopia's invasion of Somalia is to promote Ethiopia's security especially along its border in the Ogaden region, as humanitarian action and also as America's bidding to help tame terrorism at the Horn of Africa. See B. Napoleon, 'Ethiopia's invasion of Somalia in 2006: Motives and lessons learned', *African Journal of Political Science and International Relations*, vol.4.no.2, 2010, pp55-65 Available at http://www.academicjournals.org/article/article1381826680_Bamfo.pdf [Accessed 28th April, 2018]

⁸⁸² TFG was formed in 2004 by Inter-Governmental Authority on Trade and Development (IGAD), comprising Uganda, Kenya, Ethiopia, Sudan, Eritrea, Djibouti and Somalia to restore peace and order in Somalia. B. Napoleon, 'Ethiopia's invasion of Somalia in 2006: Motives and lessons learned', *African Journal*

who called upon his eastern neighbors to help fight the Islamic Courts Union (ICU⁸⁸³) that was considered a challenge to the government's operations in the capital.⁸⁸⁴ This intervention was widely viewed as one aimed at achieving regime change and the imposition of a Somali government which would be friendly to Ethiopia. Observers have also raised concerns that the recent Kenya's military operation into Somali territory could work to Al Shabaab's advantage, by rallying Somalis against a foreign occupation, in much the same way that Al Shabaab enjoyed significant popular support when Ethiopia occupied Mogadishu⁸⁸⁵ in 2007 and 2008.⁸⁸⁶

Kenya's military intervention in October 2011 seemed to have signified a change in Kenya's foreign policy in Somalia. Kenya had, since independence, pursued a policy of good neighbourliness and had not engaged in any military confrontation with her neighbours. Most recently, however, a spate of cross-border kidnappings by Somalis of Western tourists and aid workers has devastated tourism along Kenya's northern coast⁸⁸⁷.

of Political Science and International Relations, vol.4.no.2, 2010, pp55-65 Available at http://www.academicjournals.org/article/article1381826680_Bamfo.pdf[Accessed 28th April, 2018]

⁸⁸³In 2000, several Islamic courts formed Somalia's Islamic Courts Union (ICU) to consolidate resources and power based on Islamic doctrine rather than within clan lines. See B. Napoleon, 'Ethiopia's invasion of Somalia in 2006: Motives and lessons learned', African Journal of Political Science and International Relations, vol.4.no.2, 2010, pp55-65 Available at http://www.academicjournals.org/article/article1381826680_Bamfo.pdf[Accessed 28th April, 2018]

⁸⁸⁴ Y. Alemu, *Causes and Consequences of Kenya's military intervention in Somalia*. MA Thesis, Addis Ababa University, 2014.

⁸⁸⁵Ethiopia took over Mogadishu in 2007 after invading Somalia in 2006. See K. Menkhaus *After the Kenya intervention in Somali*. ENOUGH Project January, 2012 p.6

⁸⁸⁶ Menkhaus, K., *After the Kenya intervention in Somali*. ENOUGH Project January, 2012 p.6

⁸⁸⁷ S. Sayare, 'French woman abducted in Kenya dies', *The New York Times* <https://www.nytimes.com/2011/10/20/world/africa/french-woman-abducted-in-kenya-dies.html> [Accessed 28th April, 2018]

While the Government of Kenya maintained⁸⁸⁸ that the kidnappings and the cross-border raid by Al Shabaab was the reason for Kenya's offensive, others⁸⁸⁹ think that this was just the pretext for Kenya's offensive against Al Shabaab, but that the plans for a Kenya-backed military operation in the border area have been in place for some time.⁸⁹⁰ Observers think that this may have been one of many examples of Al Shabaab's growing linkages to criminal networks in the region, including with pirates. The beginning of African Union Mission In Somalia (AMISOM)⁸⁹¹ military campaigns has, however, in the recent past weakened the Al Shabaab's capacity to unleash terror in Somalia. Al Shabaab, however, continue to pose serious security challenges to AMISOM and the western-backed government of Somalia as it has reportedly enhanced its ability to engage in asymmetric warfare with 'increasing efficiency and lethality.'⁸⁹²

Kenya's pursuit of Al Shabaab may mark the beginning of a longer military engagement in Somalia. With the increasing Al shabaab reprisal attacks in Kenya (see chapter 3),

F. Mukinda and AFP, 'Al Shabaab attacks Kenyan territory', *Daily Nation*, 31st March, 2010. Available at <https://www.nation.co.ke/news/Al-Shabaab-attacks-Kenya-territory-/1056-890844-v9j114z/index.html> [Accessed 28th April, 2018]

⁸⁸⁸ AFP, 'Kenya declares war on Al Shabaab', *Daily Nation*, 15th October, 2011. [Accessed 28th April, 2018]

⁸⁸⁹ S. Kipchumba, 'Military Action in Somalia was Planned for Years, Says US Cables,' *Daily Nation*, December 17, 2011. Available at <https://www.nation.co.ke/news/Military-action-in-Somalia-was-planned-for-years-say-US-cables-/1056-1291354-158kyx9z/index.html> [Accessed 28th April, 2018]

⁸⁹⁰ S. Kipchumba S 'Military Action in Somalia was Planned for Years, Says US Cables,' *Daily Nation*, December 17, 2011. It is still not clear Whether Al Shabaab was directly responsible for any of the kidnappings, but Al Shabaab appears to be colluding with the kidnappers and is now holding the captives.

⁸⁹¹ The African Union Mission in Somalia (AMISOM) is an active, regional peacekeeping mission operated by the African Union with the approval of the United Nations. It was created by the African Union's Peace and Security Council on 19th January 2007 with an initial six month mandate. See <http://amisom-au.org/amisom-background/> [Accessed 28th April, 2018]

⁸⁹² African Union, Peace and Security Council, 544th Meeting, *Report of the Chairperson of the Commission on the Follow-up of the Relevant Provision of Communique PSC/PR/COMM. (DXXI) on the Situation in Somalia*, 18 September 2015, <http://www.peaceau.org/uploads/psc-rpt-somalia-18-09-2015-9p.pdf>, para.14.

scholars like Menkhaus⁸⁹³ have warned that the danger could grow larger the longer Kenyan forces stay inside Somalia. The recent attacks of KDF camps in El-Ade⁸⁹⁴ and Kulbiyow camps respectively in which Kenya could have lost approximately 200 soldiers indicates that Kenya may, in the near future, consider withdrawing her military from Somalia.

The various military interventions above point to the fact that military intervention in Somalia may not, by itself, bring a long lasting peace and security. While military intervention may be necessary to protect life, it is a temporary measure that should be replaced with functional government systems.

This is especially critical because the history of foreign military intervention, and the long history of colonial rule⁸⁹⁵ under 5 different European powers and the division of the territory among them in Somalia impacts upon Somali views of foreign (military) power. This is perceived with caution, suspicion and mistrust. To minimize the adverse effects on perceptions, any foreign military intervention in Somalia must be short-lived and should be withdrawn as soon as the objective of the intervention is attained, only being maintained when their continued stay is absolutely necessary.

⁸⁹³K. Menkhaus, *After the Kenya intervention in Somali*. ENOUGH Project January, 2012 p.6

⁸⁹⁴'Kenya lost 173 soldiers in terror attack on KDF base in Somalia, survivor says' *The Standard* Newspaper 16th January, 2017.

www.standardmedia.co.ke/article/2000229998/kenya-lost-173-soldiers-in-terror-attack-on-kdf-base-in-somalia-survivor-says[Accessed 17th February 2017] See also

www.standardmedia.co.ke/article/2001227555/kulbiyow-camp-battle-left-68-compatriots-dead [Accessed 1st February 2017].

⁸⁹⁵ E.R Turton, 'Somali resistance to colonial rule and the development of Somali political activity', *The Journal of African History* Vol. 13, No. 1 ,1972, pp. 119-143

Besides that, military interventions must strive to win the goodwill and support from the local Somali community that they are serving. This is important not only to avoid situations where foreign soldiers are betrayed, but to enhance the chance that law and order prevails in zones that are already demilitarized.



In this Dec. 14, 2011 file photo, two Kenyan army soldiers shield themselves from the downdraft of a Kenyan air force helicopter as it flies away from their base near the seaside town of Bur Garbo, Somalia. Military interventions produce mixed results. Photo by AP /Ben Curtis. Available at <https://www.ctvnews.ca/world/kenya-attacks-last-stronghold-of-somali-militants-1.975030>[Accessed 29th April, 2018]

6.3.2 Locals against foreign military intervention in Somalia: the need to demystify foreign intervention

Militants often develop and propagate negative narratives about foreign military intervention in Somalia⁸⁹⁶ in order to incite the population against the foreign forces. As a result, many foreign interventions in Somalia have been undermined by lack of support from the local population. This is hardly surprising given the history of colonialism where locals rallied against foreign invasion. This narrative has been so successful to the extent that despite the massive military hardware that foreign forces possess, they have not been able to quell the militia that have been operating in Somalia since Said Barre was ousted in 1991. Some of these foreign forces, after suffering heavy casualties, have been forced to withdraw without achieving the objective of stabilizing Somalia.

Military firepower alone has proved ineffective to bring stability to Somalia. Rivalry between various clans in ethnically and linguistically homogenous Somalia has prolonged the 27 year old conflict. Indeed, there is need to educate and persuade the Somali population for them to fully support foreign military interventions aimed at stabilizing Somalia.⁸⁹⁷ This is because in itself, military intervention is not sufficient to restore normalcy unless the conflicting parties commit to dialogue and non-violence.

⁸⁹⁶ M. Terdman, *Somalia at war – between radical Islam and tribal politics*, The S. Daniel Abraham Center for International and Religious Studies, Tel Aviv University, March 2008. Available at <https://dacenter.tau.ac.il/sites/abraham.tau.ac.il/files/Somalia%20at%20war.pdf> [Accessed 29th April, 2018]

⁸⁹⁷ H. S. Mohamud, 'How to win the war against Al Shabaab', Aljazeera, 11th October, 2013. Available at <https://www.aljazeera.com/indepth/opinion/2013/10/how-win-war-against-al-shabab-201310119652136824.html> [Accessed 29th April, 2018]

Partnership and support from local Somalis and those in diaspora is essential in promoting peace efforts in Somalia.⁸⁹⁸

Negotiations with militia groups in Somalia can still be pursued with a view to a political settlement through compromise. Military engagement appears counter-productive and tends to harden radical militants, instead of weakening them. This may work for some of the clan-based militants.

It is evident that local Somali support is paramount for the success of any peace efforts by Somalia and international community. Any interventions that have not won the hearts and minds of Somalis is bound to fail in the long term. Mobilizing Somalis in any peace efforts should be primary before any intervention programmes can be implemented.

6.4 Problems faced by returnees

6.4.1 Insecurity and clan tensions

Since the civil war broke out in Somalia in 1988, many parts of the country have been zones of contestation by clans over rangeland, farmland, towns, and cities.⁸⁹⁹

The coup d'état that brought an end to the government of Siad Barre⁹⁰⁰ became the catalyst for lawlessness in Somalia as various clan factions fought for the control of the

⁸⁹⁸ H. S. Mohamud, 'How to win the war against Al Shabaab', Aljazeera, 11th October, 2013. Available at <https://www.aljazeera.com/indepth/opinion/2013/10/how-win-war-against-al-shabab-201310119652136824.html> [Accessed 29th April, 2018]

⁸⁹⁹ Although clan is not the sole source of social and political organization in southern Somalia, in the Jubba regions clanism has been consistently mobilized in land disputes. See UN, Report of the Secretary General on Somalia, 3 September 2013, S/2013/521, para17 and UN, Report of the Secretary General on Somalia, 3 September 2013, S/2013/521, para41.

⁹⁰⁰ Siad Barre led a military junta that came to power after a coup d'état in 1969. He was overthrown after clan based militia clashed defeated his government and forcing him into exile in May, 1991. Barre died on

government. Siad Barre was a dictator, propped up by a number of Western powers, and fermented ethnic attachments and rivalries that extended the divide and rule strategies of the colonial powers in the post-colonial period.⁹⁰¹

The lack of an accepted central government, ongoing armed conflict, clan-based rivalries, and power vacuums leading to lawlessness, have fuelled an ongoing severe humanitarian and human rights catastrophe in Somalia.⁹⁰² Insecurity and clan tension continue to threaten peace in Somalia and efforts by many regional and international forces have not borne much fruit.

According to some recent reports, the general security situation in Mogadishu and the regions of southern and central Somalia remain volatile.⁹⁰³ Dynamics of conflict play out involving Al Shabaab, clan militias and inter-clan disputes.⁹⁰⁴ Violence between various factions is reportedly mainly fuelled by disputes over land and political control.⁹⁰⁵ Indeed

January 2, 1995 in Lagos reportedly from a heart attack. See World Peace Foundation, 7th August, 2015. Available at <https://sites.tufts.edu/atrocityendings/2015/08/07/somalia-fall-of-siad-barre-civil-war/> [Accessed 30th April, 2018]

⁹⁰¹T. Atlas, 'Cold War rivals sowed seeds of Somalia tragedy', 13th December, 1992. Available at http://articles.chicagotribune.com/1992-12-13/news/9204230505_1_mohamed-siad-barre-somalia-tragedy-military-aid [Accessed 29th April, 2018]

⁹⁰²UNDP, Somalia Human Development Report 2012 - Empowering Youth for Peace and Development, 28 September 2012.

⁹⁰³ UN Security Council (UNSC), *Report of the Secretary-General on Somalia*, 8 January 2016, S/2016/27, <http://www.refworld.org/docid/5698a0b64.html>, para. 12

⁹⁰⁴ United States Department of State, 2015 *Country Reports on Human Rights Practices*- Somalia, 13 April 2016, <http://www.refworld.org/docid/5716120a8.html> [Accessed 20th April 2017]

⁹⁰⁵ For example, where pro-Government forces and AMISOM have forced Al Shabaab to retreat from homes and land, disputes over land have arisen. United States Department of State, 2015 *Country Reports on Human Rights Practices*-Somalia, 13 April 2016 <http://www.refworld.org/docid/5716120a8.html>. See also ICRC, Annual Report 2014- Somalia, 9 June 2015, <http://www.refworld.org/docid/558131ac2c.html>

questions abound over access to resources as part of peace-building efforts (.See 6.2.1 for discussion on the desire by foreign powers to control resources and sometimes push for regime change).

6.4.2 Sexual and gender-based violence

Reports indicate that civilians in Somalia continue to face widespread sexual and gender-based violence.⁹⁰⁶ Government forces, AMISOM troops and clan militia are reported to be responsible for grave human rights violations including killings, rape, other forms of sexual abuse and violence, and sexual exploitation.⁹⁰⁷ While sexual and gender-based violence occurs in societies that are not at war, the scope and magnitude in war zones are wide and intense respectively. Hopefully, as the general security situation in Somalia improves, institutions dealing with sexual and gender-based violence will be able to arrest perpetrators and carry out a campaign to curb and discourage it. Indeed Adera opines that many sexually-related offences in Somalia go unreported because many Somalis condemn a raped woman to lifelong shame since Somali society values sexual chastity and women are expected to be virgins at marriage.⁹⁰⁸ While the author seems to link rape to sexual promiscuity, this is a question of patriarchal values about women, not about chastity and virginity.

⁹⁰⁶ HRW, *Somalia: Civilians at Serious Risk*, 27 January 2016, <http://www.refworld.org/docid/56b120a111.html> [Accessed 20th April 2017]

⁹⁰⁷ UNSC, *Report of the Secretary-General on Somalia*, 12 May 2015/S/2015/331, <http://www.refworld.org/docid/556581e64.html,para> 62. See also UNSC, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557/abf904.html,para> 145-159

⁹⁰⁸ Adera, E., *The Impact of Refugee Settlements on the Environment: A Survey of Ifo and Utange Refugee Camps in Kenya*, Master's Thesis, Moi University, 1997, p.14.

6.4.3 Scarce livelihood opportunities

Because of dilapidated infrastructure networks and a lack of industries and factories, the Somali economy is unable to create the requisite job opportunities for the population and the economy is weak with a lack of livelihood opportunities.⁹⁰⁹ It is indeed the lack of livelihood opportunities that threaten the possible reintegration of returnees and has often led to the recurrence of conflict as various factions fight for resources⁹¹⁰. In fact, the UNHCR has observed that 'returnees and other persons of concern to UNHCR need to have access to reasonable resources, opportunities and basic services to establish a self-sustained livelihood in conditions of equal rights with those of other local residents and citizens. Their reintegration should take place under conditions of social, economic, cultural, regional and gender-based equity.'⁹¹¹

In addition, various humanitarian organizations have been offering services with a view to improving the humanitarian situation in Somalia. However, conflict continues to have a detrimental impact on the humanitarian situation, with vital humanitarian assistance reportedly being intercepted and confiscated by armed groups.⁹¹²

⁹⁰⁹Amnesty International, *No place like home: Returns and relocations of Somalia's displaced*, p.9. AFR 52/001/2014. London, Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

⁹¹⁰B. Menke, *The role of 'Livelihood ,natural resources in conflict and post-conflict peacebuilding*, Masters project submitted in partial fulfillment of the requirements for the Master of Environmental Management degree in the Nicholas School of the Environment of Duke University 2009

⁹¹¹UNHCR, *Handbook: Voluntary Repatriation, International Protection*, 1996, 6.4.

⁹¹² UN General Assembly, *Assistance to Refugees, Returnees and Displaced Persons in Africa: Report of the Secretary-General*, 20 August 2015, A/70/337, <http://www.refworld.org/docid/560149a34.html>, para.44.

6.4.4 Inadequate education and health facilities

Many refugees in Dadaab cited the lack of education and health facilities in Somalia as one of the reasons they were unwilling to repatriate. This is especially so as many considered their access to education as guaranteeing a more prosperous future for themselves and their children. While in Dadaab, these services are offered freely, by UNHCR⁹¹³ and other partner NGOs⁹¹⁴ in Dadaab.

Many of the parents and students in secondary schools at the camps expressed optimism that access to education would guarantee a better future.. One such student confided in this researcher that, 'Every refugee student is hopeful to get resettlement (in a third country) and continue with quality education abroad.'⁹¹⁵ According to one charitable organization, Windle Trust Kenya (WTK)⁹¹⁶, in charge of secondary and post-secondary education among refugees in Dadaab, refugee students who excel and attain university entry grades are granted scholarships through their education partners. This ultimately enhances the chances that such students would stand a higher chance of resettlement once in third countries on scholarship. Resettlement, in a third country, is popular among many refugees in Dadaab regardless of whether they are undertaking studies or not. This is largely informed by their perceptions that there are better opportunities for asylum seekers in developed countries. One respondent argued that, 'I would rather that

⁹¹³UNHCR, 'Education', <http://www.unhcr.org/ke/education>[Accessed 29th April 2018]

⁹¹⁴ Some of the NGO's that partner with UNHCR in the provision of education are CARE KENYA, Norwegian Refugee Council and Windle Trust Kenya

⁹¹⁵An anonymous Interviewee in Dadaab 23/08/2016.He was responding why he is not in support of repatriation as it would interfere with his education.

⁹¹⁶ In 1977, Hugh Austin Windle Pilkington sets up the Windle Charitable Trust in Kenya(WTK),mainly to support needy Kenyan students and also to assist refugees in the country.

Seehttp://www.windle.org/About_us.html[Accessed 29th April, 2018]

refugees be resettled in other country...to enable them heal from the past...going back to Somalia will reopen the wounds.’⁹¹⁷

According to WTK, hundreds of students have benefitted from the scholarship programme since its inception. Although only approximately 20 annually benefit from the programme, many consider it the ultimate way of escaping the confinement in the camps and accessing global opportunities enjoyed by the Somali diaspora. The fact that ‘Somalia has no education system in place’⁹¹⁸ according to one respondent, is reason enough he would only leave the camp as the last resort. He asked, ‘How can I take several years to study and then repatriate before I sit for the national exams.’ He is among the candidates expected to sit for the for Kenya Secondary School Education national examinations, a gateway to post-secondary education globally.

The fact that one of the reasons that make refugees prefer resettlement to third countries in Europe, Australia and the USA is because of the need for quality further education. This suggests that some refugees would take up repatriation if comparable educational opportunities were made available in their home countries.

This is a similar argument regarding health services that are considered crucial for potential returnees. While many respondents did not cite the lack of health facilities in Somalia as a major reason to avoid return, many acknowledged that they were happy

⁹¹⁷ Interview in Dadaab 23/08/2016. The interviewee who spoke in confidence believed that repatriating to Somalia would evoke bad memories of war and make healing difficult.

⁹¹⁸ An anonymous Interview in Dadaab 23/08/2016. He was responding why he is not in support of repatriation as it would interfere with his education

with the free health facilities in the refugee camps and would have wished that the same healthcare facilities were available in Somalia. As soon as the Government of Kenya announced the intention to close the Dadaab camps, MSF, one of the health providers in Dadaab challenged the move citing the lack of health facilities in Somalia. According to Head of Mission for MSF Kenya at the time,

‘What is clear is that returning to Somalia now will have disastrous consequences on people’s health...It will escalate their vulnerability to malnutrition, weakening their immune systems and making them vulnerable to infectious diseases.’⁹¹⁹

According to the MSF report, extreme levels of insecurity and a dangerous absence of medical care mean that the conditions necessary for a safe and dignified return are simply not present in many parts of Somalia today.⁹²⁰

6.4.5 Land and property rights

Access to land is an important factor for returnees. Apart from security, access to land is the next most important factor that refugees in exile consider before taking the step to repatriate. Protracted conflicts resulting in decades spent in exile have made it difficult for many refugees to access their former parcels of land on return. This also applies to land that was communally owned. An Amnesty International report indicates that many returnees have not been able to return in safety and dignity because of several factors

⁹¹⁹ A report by MSF titled ‘Dadaab to Somalia: Pushed Back into Peril’. The study was carried out in Dadaab during the months of July and August 2016 sampled 838 respondents and was released in October 2016. The report argued that repatriation was premature and could expose refugees to different health hazards in Somalia since health facilities were either lacking or with no capacity.

⁹²⁰ A report by MSF titled ‘Dadaab to Somalia: Pushed Back into Peril’. The study was carried out in Dadaab during the months of July and August 2016. It sampled 838 respondents and was released in October 2016. It challenged repatriation on the grounds that Somalia was not yet safe for a dignified return.

including the lack of access to land or livelihoods.⁹²¹For instance, in one localized study of the internally displaced in Mogadishu, 25% of people surveyed owned land in their areas of origin.⁹²²This finding is consistent with Somali refugees recently surveyed in Kenya and Ethiopia where according to the report, roughly 25% of people surveyed said they would have access to land.⁹²³This implies that about 75% of returnees may not be able to access land upon return. Repatriation plans should consider this to ensure that returnees have access to land as an essential livelihood resource and so as not to become displaced within Somalia.

According to the report, there is no national legal framework governing land tenure and land management in Somalia, while there is weak technical capacity in land management. With land records incomplete or nonexistent, land appropriations are rampant and have led to a 'gatekeeper system', a lucrative business led by powerful individuals and groups, often with links to district commissioners and other local level authorities or militia, who present themselves to internally displaced people as legitimate landowners⁹²⁴. Gatekeepers take on an informal role of camp managers for profit, in the absence of formal camp management throughout the years due to insecurity. Gatekeepers occupied

⁹²¹ Amnesty International (2014:9). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

⁹²²Save the Children, Profiling of IDPs in Darwish and Sigale Settlements, March 2013, p17.

⁹²³Danish Refugee Council, Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return, 2013, p .37.

⁹²⁴ Amnesty International (2014:37). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 17th August 2016]

the lacuna that was left by the collapsed state land institutions. The fact that most Somalis were nomadic pastoralists even before the conflict in 1991 means that land was communally owned among them—a typical feature among many pastoralists including Somalis in Northern Kenya. This suggests the necessity of a new communal land ownership framework to sustain pastoralist communities. The land ownership framework generally, too, needs to be audited and deficiencies addressed.

Women who return to Somalia without their male family members may be the most disadvantaged on land rights. Sharia law is often strictly interpreted in line with many restrictive Somali customary norms which limit women's ability to own, rent or inherit land or other property in their own names.⁹²⁵ The inability of these women to access land in their own right affects their ability to provide for themselves and their families upon their return, could lead to other rights violations, and is also discriminatory. The fact that many Somali families have lost male family members because of the years of conflict and displacement, leaving displaced women as the head of their household with primary responsibility for children and other dependent family members means many families could be headed by women. A new land ownership framework that could grant women rights to land is necessary to address this problem.

⁹²⁵ Amnesty International (2014:38). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf> [Accessed 17th August 2016]

Another challenge related to land in Somalia is the fact that many of those willing to return may not want to return to their areas of origin, especially to rural areas. Many refugees from Dadaab in Northern Kenya, for instance, have become accustomed to urban lifestyles and are thus reluctant to return to their original rural homes. Being accustomed to an urban lifestyle also means the many social amenities like water, internet services, education, piped water, jobs and others available in urban areas and people may find it extremely difficult to now live without these services in rural Somalia. The same challenges experienced by resettled Internally Displaced People⁹²⁶ (IDP's) in Somalia since 2012 could be experienced by Somali refugees from Dadaab upon return. The government of Somalia should therefore put measures in place to mitigate these challenges as returnees continue to arrive.

6.4.6 Conclusion

It is evident that sustainable peace and security is not just signified by the absence of war, but rather by a more cohesive society where justice and the rule of law are upheld by all. Most importantly, the need to address the reasons for the conflict that led to refugees is fundamental before the sustained efforts at repatriation can be promoted.

In this chapter, I explored the circumstances under which the 1951 UN Convention was enacted. I argue that the refugee law was more focused on resettling the post WW2 refugees and was limited in scope. The 1969 OAU Convention broadened the concept of

⁹²⁶UN, Somalia Consolidated Appeal, 2013-2015. You may also refer to Save the Children, *Profiling of IDPs in Darwish and Sigale Settlements*, March 2013, p20 and African Union Convention on for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Arts. 9(2) (e) and 11(1).

who a refugee is in the African context. The theories of both conventions have faced challenges of implementation as a result of the masses of refugees that overwhelm host states. I suggest that the refugee regime needs to change to capture the new realities of the refugee challenge today.

To address the more protracted nature of today's refugee problem, I propose that focus should shift from the plight of refugees in the camps to the reasons for their flight. I argue that solving the reasons for their flight is the only way that refugees will be attracted to permanently repatriate. To achieve this, the security problem at home must be addressed to allow a dignified return.

Besides that, I argue that access to livelihood opportunities is essential to returnees. Promoting social services and strengthening governance structures is also important so as to inspire confidence to prospective returnees and those that have returned. Local support is important for any intervention programme(s) to succeed. For the case of Somali returnees, I propose that all problems faced by returnees including insecurity, gender based violence, inadequate social services and issues of land rights must be addressed.

CHAPTER SEVEN:

CONCLUSION

In this dissertation, I set out to explore the repatriation process among the Somali refugees in Dadaab refugee camp in Northeastern Kenya. To this effect, I first sought to explore the perceptions of the Government of Kenya, SFG, UNHCR and Somali refugees regarding the safety and security of Somalia as prerequisite for repatriation. I sought to examine the responsibilities of each of these actors as provided for in the TA and what was actually being implemented. Besides that, I examined the extent of refugee participation in decision making including in the choice to repatriate or otherwise. Finally, I extrapolated how a refugee centered approach to repatriation could apply more broadly to African refugee crises.

This dissertation starts with the introduction of key aspects regarding who a refugee is, the refugee regime and the complexity of the repatriation process. The introduction set out the statement of the problem as that of Kenya's increasing concern with national security and its desire for the repatriation of Somali refugees as a security strategy. Chapter two explored the existing literature and identified key gaps in it. It also highlighted the contribution of the study to the existing body of literature. Chapter three explored the various perceptions of refugees regarding the safety and security situation in Somalia. The roles and responsibilities of the TA parties in repatriation were discussed

in chapter four and the extent of refugee participation in decision making was discussed in chapter five. Chapter six concludes by suggesting a refugee centered approach that could apply more broadly to refugee crises in Africa.

In chapter one, I defined a refugee and explored the refugee regime, especially the 1951 UN Convention. The demand by the Government of Kenya for the mass repatriation of Somali refugees formed the basis of the research problem. Considering that the refugee regime envisages that repatriation must be voluntary, the demand by the Government of Kenya for the mass repatriation of Somali refugees from Dadaab violates this provision. .

In chapter two, I interrogated the literature on the 1951 United Nations Convention Relating to the Status of Refugees, as the blueprint of refugee regime globally. I examined the limited scope of the 1951UN Convention and the subsequent 1967 protocol that expanded its mandate. The Organization of African Unity Convention, Governing Specific Aspects of Refugee Problems in Africa of 1969 was also explored as an African domestication of the 1951 UN Convention. I argue that the refugee regime is outdated and limited in scope as it overlooks other causes of refugees, for instance social and economic exclusion. The regime too seems to overlook the interests of host states as it was meant to protect the vulnerability of refugees.

I traced the antagonistic relationship between Kenya and Somalia that dates back to the early 1960's. Somalia's desire to have NFD/NEP unified with Somalia, and the subsequent resistance from Kenya was also examined. The current refugee crises in Dadaab brings to the fore the tense relationship between Kenya and Somalia given the porous and vast border between the two countries. Kenya has often blamed Somali refugees in Kenya as supporting military elements from Somalia to launch attacks in Kenya. I, however, conclude that that has just remained an allegation with no substantial evidence.

The challenge of implementing the 1951 UN Convention principle of *non-refoulement* is also extensively discussed in this chapter. I conclude that the principle of *non-refoulement* remains in theory rather than in practice as the UNHCR does not have the power to dictate to host states on matters of refugees on their soil. This chapter also discussed the challenges of mass repatriation through tripartite agreements. I maintain that many tripartite agreements are not as a result of intensive and extensive consultation with refugees, but are primarily determined by a few policy makers. This top-down approach by refugees' actors (host state, home country and UNHCR) is criticized.

Finally, in this chapter, I discuss the existing gaps in literature. Notably, is the fact that most reports are those by humanitarian workers and organizations and not by independent academic researchers. Many reports also do not capture individual refugee

opinions but tend to rely on 'experts' who are in charge of decision making in refugee matters. Many reports, too, are based on the top-down approach in refugee issues.

In chapter three, I explored different perceptions of the Tripartite parties and refugees about the security situation in Somalia as a prerequisite for return. The Government of Kenya has insisted that Somalia is relatively 'safe' for the return of thousands of Somali refugees. The Government of Kenya has pressurized refugees to return, sometimes threatening to close down the refugee camps and forcefully repatriate them. Albeit without evidence, it has blamed refugees for increased insecurity and terrorist attacks in Kenya. Kenya has claimed that some terror elements hide within the refugee camps as they plan to launch attacks on Kenya-an assertion that, too, lacks substance as there is no evidence as many refugees accused of these allegations have often been acquitted by the courts. This seems to be a 'smear campaign' against refugees to serve Kenyan interests.

The SFG is also interested in the positive legitimacy and credit that it is likely to receive locally and internationally by welcoming refugees back from exile. It is however grappling with weak governance structures in the face of a resurgent Al Shabaab militia that seeks to topple it. Returnees also complicate local politics and threaten the relative calm in Somalia as returnees and locals fight over rights to land and other resources.

The UNHCR on the other hand seeks to protect refugee welfare without antagonizing the host state and state of origin. The fact that refugees are a political issue leaves the

UNHCR with very limited options and a requirement to work within what is allowed by the host state. Reduced funding to the UNHCR puts the UNHCR in a fix as states adopt a more restrictive approach to hosting refugees. Refugees, perhaps aware of this predicament, are forced to rely on their networks and judgment to either return or remain in the camps amidst dwindling UNHCR support to stay in the camps. Although the majority of Somali refugees in Dadaab cite insecurity in Somalia as a reason not to return, they admit they have limited options. The situation is dire.

Because refugees cannot directly make decisions regarding return, a preserve of the elites, they are forced to creatively bear the consequences of such decisions. The fact that the Government of Kenya, SFG and the UNHCR arrived at and signed the Tripartite Agreement, despite refugee perceptions of the in(security) in Somalia, implies that the elites direct these systems for interests that may not have the refugees at the centre. This is in line with elite theory where a few privileged individuals or organizations make decisions on behalf of the masses. Aware of these embedded interests, refugees rely on their own networks to verify information about Somalia and make independent decisions regarding return.

Chapter four focused on the role of the governments of Kenya, Somalia and the UNHCR as envisaged by the TA. As discussed above, however, the TA signed on 10th November 2013 has faced numerous challenges regarding its implementation. According to the TA,

the government of Kenya should provide security for refugees while in Kenya, help put up logistics for return, and manage and control refugees during return. I also discussed the role of the government of Kenya in supporting what can be termed as induced return.

The TA tasks the government of Somalia with providing refugees with security upon return. It should also promote national development and create an environment for humanitarian assistance. The UNHCR on the other hand should mobilize resources to support the repatriation process. The TA expects the UNHCR to be the custodian of refugee rights during repatriation.

While the TA envisages a voluntary repatriation exercise, the Government of Kenya has been accused of coercing Somali refugees to return. In her defense, the Government of Kenya claims that Somalia is now 'safe' for return and accuse the UNHCR of wanting Somali refugees to continue staying in Kenya, even when conditions at home have improved. The SFG has opposed massive repatriation of Somali refugees preferring a staggered system so as to allow it to welcome refugees at home in a safe and dignified manner.

Members of the TA do not seem to agree on the un(safety) of Somalia, they differ on how best to implement repatriation as discussed in this chapter. I argue that it is evident that although signatories of the TA agreed in principle about voluntary repatriation of Somali refugees, they have differed greatly about how the actual implementation of repatriation should be carried out. I have also discussed what constitutes a voluntary return.

The refugees, who are not directly party to the TA, its representation by UNHCR notwithstanding, are left between a rock and a hard place as members of the TA engage in what can be termed as 'supremacy battles'. The TA in theory seems to be far removed from practice and only refugees themselves understand this reality. I maintain that refugees interests as Persons of Concern to the UNHCR should be paramount and should supersede the individual interests of the members of the TA.

As discussed in chapter five, I have criticized the nature of organized returns that seem to work on the premise that refugees should return en masse. I have criticized the fact that refugee voices seem to have been overshadowed, especially in organized repatriations. I indeed suggest that refugee democratic spaces within the UNHCR be expanded. I have cited cases of Afghan refugees whose perspectives may suggest they were not fully informed of what awaited them at home. They simply perceived repatriation as the only option they had been given, hence impeding their freedom to choose otherwise. This I argue, violated the refugee regime that outlaws involuntary returns.

Moreover, I have cited the 1996 case of Rwandan refugees in Tanzania as amounting to involuntary return. While what the refugees feared might happen to them upon return did not actually happen, their fears were founded and needed be respected nevertheless. Similarly, I explored the views of Somali refugees in Dadaab whose majority are not ready yet to voluntarily repatriate to Somalia despite the TA to facilitate return. Indeed the uptake of the voluntary repatriation return package by the UNHCR has been very

slow with only about 20%⁹²⁷ of refugees repatriated as of 2018. I maintain that many refugees still perceive the security situation in Somalia as volatile and hence are reluctant to return. The large number of refugees seeking entry to European countries has put potential European host states in a dilemma between humanitarian concerns and the need to protect their borders for security reasons. Following this, I suggest that it is probably time the refugee regime needs to be changed in line with these new realities. As it is, I argue that the refugee regime is inadequate particularly when dealing with millions of refugees.

Decisions touching on refugees must be refugee centered so as to have legitimacy among refugees. Engaging refugees in decision making will help decision makers arrive at decisions that are generally acceptable to a majority of refugees. Even in organized repatriations, I argue that individual refugees should be allowed to make an informed decision and have free choice to return or otherwise.

As discussed in Chapter six, sustainable peace and security is not just signified by the absence of war, but rather by a more cohesive society where justice and the rule of law are upheld by all. Most importantly, the need to address the reasons for the flight that led to refugees is fundamental before the sustained efforts at repatriation can be promoted.

⁹²⁷<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2018/02/Voluntary-Repatriation-Analysis-2-February-2018.pdf> [Accessed 20th April, 2018]

In this chapter, I explored the circumstances under which the 1951 UN Convention was enacted. I argue that the refugee law was more focused on resettling the post WW2 refugees and was limited in scope. The 1969 OAU Convention broadened the concept of who a refugee is in the African context. The theories of both conventions have faced challenges of implementation as a result of masses of refugees that overwhelm host states. I suggest that the refugee regime needs to change to capture the new realities of refugee problem.

To address the more protracted nature of today's refugee problem, I recommend that focus should shift from the plight of refugees in the camps to the reasons for their flight. I argue that only by solving the reasons for their flight will refugees be attracted to permanently repatriate. To achieve this, the security problem at home must be addressed to allow a dignified return.

Access to livelihood opportunities is essential to returnees. Promoting social services and strengthening governance structures is also important so as to inspire confidence in prospective returnees and those that have returned.

Finally, I argue that military intervention alone is not reliable in promoting sustainable peace. I instead suggest that local support is essential for the success of any intervention programme(s). For the case of Somali returnees, I propose that all problems faced by returnees, including insecurity, gender based violence, inadequate social services and

issues of land rights must be addressed. This will act as pull factors and refugees will be attracted to repatriate. Unless the problems that led to the flight of refugees are addressed, refugees may only return when subjected to push factors in asylum and this amounts to involuntary repatriation.

Perceptions on the safety and security situation in Somalia are highly influenced by the interests of states and non-state actors. As such, I claim that refugee perceptions should be viewed as paramount and should, comparatively, be treated as critical. I have maintained that albeit theoretically the TA parties agreed on the need to promote voluntary repatriation, they have greatly differed in practice. This, I argue, points to a refugee regime that is not comprehensive in fully addressing the refugee repatriation process. Consequently, there is need to review the refugee regime.

On refugee participation in decision making, I conclude that refugees seem to be at the periphery. They are not actively involved in decision making as they ought to be. A framework needs be in place to remedy this and place refugees at the centre of decision making.

Finally, only by addressing the reasons for the flight of refugees would a repatriation process be truly voluntary. This is the only sure way of having sustainable peace and security in post-conflict states.

The refugee regime appears to make decisions about refugees informed by a top-down approach. It focuses on the views of the 'experts' who determine policy issues about the refugee problem. As determined in this dissertation, the refugee problem can best be understood from the experiences of refugees themselves. For sustainability, refugee solutions should be 'home-grown' so as to have legitimacy and thus acceptance by refugees. I argue that expert opinion is sometimes detached from refugee experiences thus likely to face resistance from refugees. Refugees should be at the centre of decision making on matters affecting them and not at the periphery. I argue that refugee actors should only create a supportive environment that allows refugees to determine their destiny and play a 'leading' role in finding lasting solutions to the refugee problem.

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APPENDIX

Interview Schedule

This schedule is for academic purposes only. The respondent's views remain anonymous and confidentiality will be strictly adhered to.

A. Perception of Kenya, Somalia, UNHCR and refugees on the safety of Somalia

1. (a) Do you perceive Somalia as safe for repatriation? Yes/no

b) If yes, give reasons

.....
.....

c) If no,
why?.....

2. (a) Do you consider your perception in question 1. above personal or you consider it generally held by others like refugees, UNHCR, Kenya etc.?

(b) Give reasons for your
answer.....

B. Role of Kenya, Somalia, UNHCR (Tripartite parties) and refugees in promoting successful repatriation, stability and security in the region.

3. (a) What do you think is the role and responsibility of Tripartite parties and refugees in ensuring successful repatriation?.....

(b) To what extent, in your view, have each (not) fulfilled their roles and responsibilities regarding repatriation preparation process?.....

(c) Why have they failed/succeeded in promoting repatriation?.....

4 (a) What do you think is the role and responsibility of Tripartite parties and refugees in promoting stability and security in the region?.....

(b) To what extent, in your view, have each (not) fulfilled their roles and responsibilities in enhancing stability and security in their region?.....

(c) How can their role in promoting stability and security be enhanced?.....

C. Refugee preparedness for voluntary repatriation inclusivity

5(a) Why would you consider refugees (not) prepared for voluntary repatriation?.....

(b) How could refugee readiness for repatriation be improved?.....

6. (a) Why would some refugees not consider returning to Somalia at all?.....

(b) How can the desire to return home be encouraged?.....

7. (a) Are you aware of the Tripartite Agreement on repatriation signed on 10th November 2013? Yes/no

(b) If yes, how did you participate in the process? (if at all you did)?.....

(c) If no, why?.....

8. (a) How did refugees participate in the preparation of the Tripartite agreement before it was signed?

D How refugee-centered repatriation can apply more broadly in Africa

(b) In your assessment, why is the Tripartite Agreement (un)workable as far as refugees are concerned?.....

9. (c) What could you suggest as a model to make Tripartite agreements refugee-centered (refugee driven) in Africa?.....

Thank you for your cooperation.